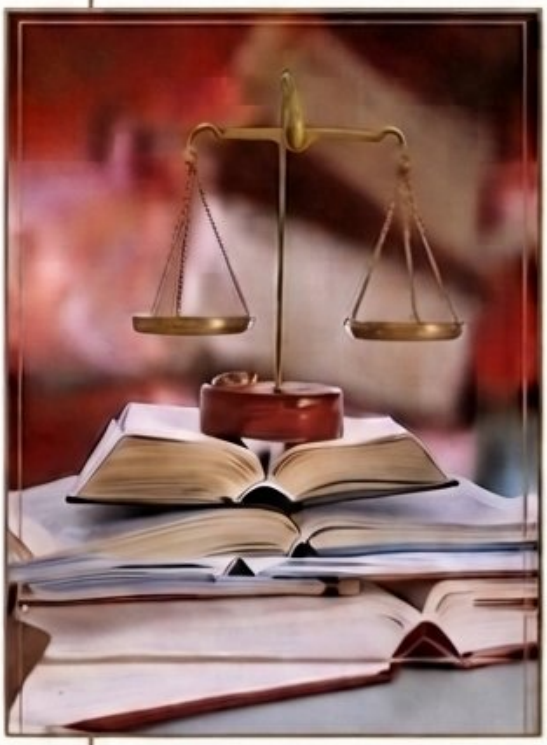
Afaq Al-Ma'rifah

Summary of Sharia-based Politics

A Concise Overview of Sharia-based Politics



Dr. Fahad bin Saleh Al-Afjlan

Afaq Al-Marifah

Summary of Sharia-based Political Policy

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Dr. Fahad Bin Saleh Al-Ajlan

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A Compilation of the Political Principles of Sharia

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Al-Muharrar

Regarding Sharia-Compliant Politics

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In the name of Allah, the Most Gracious, the Most Merciful.

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Introduction

All praise is due to Allah, a praise that is countless, pure, and blessed; which fills the heavens, fills the earth, and thereafter fills whatever our Lord wills. May Allah's peace and blessings be upon the friend of the Lord of the worlds, Muhammad ibn Abdullah, and upon his family, companions, wives, and those who follow his path and Sunnah until the Day of Resurrection. Thereafter:

In the modern era, 'Siyasa Shar'iyyah' (Sharia-based politics) is considered one of the most prevalent Sharia concepts. This Sharia terminology is no longer limited to just a chapter in the science of Jurisprudence (Fiqh), nor is it confined only to experts engaged in Fiqhi research. Rather, interest in it has taken on a widespread form, involving experts from various disciplines. Interest in it has increased so much that it has found a place in the consciousness of contemporary Muslims; as a result, they recall Siyasa Shar'iyyah and collectively feel its intense necessity.

This interest is essentially a result of showing respect for Sharia, striving to follow its regulations, and refusing to surrender to other competing intellectual ideologies. Amidst contemporary challenges and their massive changes, Siyasa Shar'iyyah was a smooth path and an ijtihadi (reasoned) field leading towards achieving this goal.

This interest has given birth to a remarkable intellectual or academic movement in the field of Siyasa Shar'iyyah in the current era. Consequently, numerous books and research papers have been written on this subject, various departments and research centers have been established in universities, and countless scientific conferences and seminars have been held. It has emerged as a long-lasting academic trend, which has expanded research related to Siyasa Shar'iyyah so much that it has now earned the merit of being an independent science or discipline.

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The scope of this research-based endeavor is vast. As a result, previous works by jurists on Siyasah Shar’iyyah (Sharia-compliant politics) have been edited, and careful attention has been paid to the political matters dispersed throughout their discussions. Alongside this, research has been conducted on new emerging issues (Nawazil) across all fields, and special emphasis has been given to modern contemporary state institutions, their international relations, and matters related to specific laws.

There is naturally a variation in the strength, methodological discipline, scientific precision, understanding of contemporary changes, and practical impact of this extensive scholarly work. It calls for comprehensive examination and review for the sake of correct guidance, counsel, and proper refinement.

An excellent aspect of this writing style is the accessible scholarly gateways to Siyasah Shar’iyyah, which simplify the concept and explain the essential core components for those seeking a thorough understanding. There are several good books on this subject from which I have benefited; may Allah Almighty bless them and grant their authors the best of rewards.

I desired to share in this virtuous work with them; hence, the presentation of this book in your hands. In this, I have made every effort to present a comprehensive subject matter on Siyasah Shar’iyyah, which can serve as a gateway for those interested in internalizing the subject and comprehending its core elements. Additionally, important fundamental components related to the jurisprudence (Fiqh) of Siyasah Shar’iyyah have been included.

To achieve this objective, I have divided the book into five main chapters:

First Chapter: I have dedicated this to discussing the fundamental propositions of Siyasah Shar'iyyah, which serves as a gateway to this field of knowledge. In this, I have included key clarifying aspects, such as its definition, chapters, principles, Sharia basis, characteristics, benefits, etc.

Second Chapter: Here, I have presented the politics of the Prophet (peace and blessings of Allah be upon him) from two primary perspectives: the first concerns his actions in accordance with the requirements of politics and leadership (Imamate), and the second concerns the guiding principles related to Siyasah Shar'iyyah.

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Third Chapter: The nature of Sharia politics (Siyasah Shar'iyyah) in the lives of the Rightly Guided Caliphs (Khulafa-e-Rashidin) has been highlighted. In this, I...

I have mentioned the major political ijtihads that occurred during the era of each Caliph and their public welfare-oriented perspectives in managing them. Finally, I concluded the chapter by discussing the maslahah-based ijtihad of the Khulafay-e-Rashideen.

In the fourth chapter, the principles of Shariah politics upon which public welfare activities are conducted are described. I have limited these to five basic principles: limiting permissible (mubah)

matters, resolving disputes through the ruler's decision, taking steps according to public welfare, maintaining balance between benefit and harm, and making obedience to the authority mandatory. I have shed some detailed light on each principle.

In the fifth chapter, my goal was to mention the practical applications of Shariah politics. Therefore, I have selected a set of historical applications related to Shariah politics, through which it will be possible to deeply understand the true nature of Shariah-related maslahah-based ijtihad. Following this, I have added some contemporary applications, through which an attempt has been made to create a framework for the correct perspective according to the principles of Shariah politics.

I hope the reader will find such intellectual benefits in this book that are consistent with the high status of Shariah politics. I express my gratitude in advance to those well-wishing critics who will alert me to any mistakes or show the right path. A believer is weak individually, but strong with the cooperation of his brothers. I accept corrections coming from them with gratitude and prayers.

I praise Allah at the beginning and the end, publicly and privately. I pray to the Great Lord that He makes this effort beneficial and grants blessings in it. I humbly pray to Him that He accepts this, out of His grace and generosity, as a blessed and beneficial knowledge that remains stored as a provision and reward for the hereafter. There is no power or strength except with the help of Allah.

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First Chapter

Fundamental Roles of Siyasa Shari'iyyah

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First Introduction

Definition of Politics (Siyasah) according to Ancient Scholars

According to the dictionary, politics (Siyasah): when someone takes charge of a matter, it is said "sasa al-amra siyasatan" (managed the matter). And a person is entrusted with human affairs when they become the director of their affairs. "Siyasah" or politics is to manage something in a way that aids its rectification and development. (1)

Some modern researchers have attributed a view to Al-Maqrizi that the root of the word "Siyasah" is not Arabic. However, they have also presented evidence that establishes the pure Arabic nature of the word. (2)

The reason for this is that Al-Maqrizi said: "This is merely a Magalia [meaning Mongolian] word, the root of which is 'Yasa'. Thereafter, the Egyptians modified the word by adding 'Seen' to the beginning to start saying 'Siyasah' and added the 'Alif-Lam' prefix to it. Consequently, those who lack knowledge on this matter assume that it is an Arabic word. But the actual fact is only what I have told you." (3)

However, what is more clear is that Al-Maqrizi did not intend to show that the word "Siyasah" is not Arabic. Because he had already mentioned its Arabic root earlier. He said: "It is said: 'sasa

al-amra siyasatan', which means he took charge of the matter. He became a 'Sayis' (manager), belonging to the community of 'Sasa' and 'Sus'. And when people appoint someone as 'Sawiyasahu', it means they have appointed him as their manager. And 'Sus' means nature and disposition. For example, it is said: eloquence is his innate nature (sus) and magnanimity is deep-seated in him (sus), meaning it originates from his nature or disposition." (4)

(1) See: Al-Sihah lil-Jawhari 3/938, Topic: (Sus), and Lisan al-Arab 6/108, Topic: (Sus).
(2) See: Al-Madkhal ila al-Siyasah al-Shar'iyyah, Abdul Aal Atwah 14; Ilm al-Siyasah al-Shar'iyyah inda Ibn al-Qayyim 268-269; Al-Qawa'id wal-Dawabit al-Fiqhiyyah wa Tatbiqatuha fil Siyasah al-Shar'iyyah, Fawzi Usman Saleh 78-79. Previously, Abdul Qadir al-Baghdadi pointed out the error of associating the word "Siyasah" with a non-Arabic language, as mentioned in Khizanat al-Adab and Lubb al-Lubab fi Lisan al-Arab (7/64-65).
(3) Al-Mawa'iz wal-I'tibar bi Dhikr al-Khutat wal-Athar 3/383; also see: An-Nujum az-Zahira fi Muluk Misr wal Qahira, Ibn Taghri Birdi 6/268.

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(4) Al-Mawa'iz wal-I'tibar bi-Dhikr al-Khutat wal-Athar 3/383.

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Here, his objective is the specific use of 'Siyasa' or politics contemporary to him, which is related to managing human affairs in specific ways outside the Sharia, and they referred to it as 'Siyasa'. He mentioned that they adopted this meaning from the Mongols; this does not mean that the word is not originally Arabic.

'Siyasa' (Politics) in Jurisprudential Terminology:

When we look back at the jurisprudential use of the terms 'Siyasa' and 'Siyasa Shari'iyyah', we notice that it was not used by the jurists in a single specific sense; rather, it has been used in various senses according to the context. This is not surprising, as there was no necessity for a rigid use of this terminology at that time, and defining it specifically yielded no significant result. By examining the uses of this terminology among the jurists, we can categorize the intended meanings into the following:

First Meaning: General Concept of Public Welfare.

The intent here is that 'Siyasa' is a broad concept applicable to everything that achieves human welfare, whether in general or specific matters.

Imam Ghazali says: (In the rectification of the creation and guiding them towards the right path that grants salvation in this world and the hereafter, Siyasa or politics is divided into four levels:

First Level: This is the highest level, which is the Siyasa of the Prophets (peace be upon them). Their governance extended over all classes of people—both general and specific—encompassing both their external and internal affairs.

Second Level: The rule of Caliphs, kings, and sultans. Their governance is also effective over all classes of people, general and specific, but only regarding their external affairs, not their internal matters.

Third Level: The Siyasa of the learned scholars regarding Almighty Allah and His religion, who are the heirs of the Prophets. Their governance is limited to the internal affairs of a specific class of people. The understanding of common people does not reach the level of benefiting from them, and the power of the scholars does not reach a stage where they can impose obligations, prohibitions, and rulings on people's external activities.

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Fourthly: The preachers; their authority or influence is limited only to the internal affairs of the common people (1).

A definition close to this comprehensiveness is found in al-Maqrizi, where he stated: (Politics is: the laws enacted for the preservation of etiquette and public welfare, and for maintaining order in circumstances) (2).

As Ibn Aqil stated in the definition of politics: (Politics is an action through which people are brought closer to reform and kept away from corruption, even if the Messenger of Allah (peace be upon him) did not specify it and no revelation was sent down concerning it) (3).

Close to this comprehensive definition is the statement of Ibn Taymiyyah, where he described politics thus: (The knowledge of removing harm from the world and attaining its benefits) (4).

Based on this, whatever achieves the welfare of people in religious or worldly matters—whether specific or general—is all included within politics. For this reason, for jurists—especially according to the Malikis and Shafi'is—the use of politics in the sense of public welfare (Maslahat) is more common. Some evidence for this includes:

- Certain jurists have forbidden a person who follows a specific Madhhab from judging outside of their own Madhhab, so that no allegation may be brought against them: (After the Madhhabs were consolidated and the followers were clearly identified, although this was the claim of politics, the Sharia ruling did not make it mandatory) (5).

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(1) Ihya' 'Ulum al-Din 1/93; and for a summary of the definition see: Hashiyah Ibn Abidin 4/95; al-Kulliyyat, al-Kafawi 510; Kashshaf Istilahat al-Funun 1/933.

(2) Al-Mawa'iz wa al-I'tibar bi-Dhikr al-Khitat wa al-Athar 3/383; and at-Tufi has referred to Fiqh as 'Sharia Politics' based on this definition. See: al-Isharat al-Ilahiyyah ila al-Mabahith al-Usuliyyah 1/160; and the use of politics in this broad sense has come repeatedly to him. See: al-Isharat al-Ilahiyyah 1/190 and 1/461.

(3) At-Turuq al-Hukmiyyah 1/29; and see: al-Furu' 10/119; this statement by Ibn Aqil was basically in protest against the person who said that there is no politics except that which conforms to Sharia. This might perhaps be related to the activities of rulers in specific cases, but his definition was general and comprehensive, so its mention here is relevant.

(4) Majmu' al-Fatawa 14/493.

(5) Al-Hawi al-Kabir 16/24; see also: al-Hawi al-Kabir 16/126; Mawahib al-Jalil 6/99; Sharh al-Zurqani 7/391; al-Mukhtasar al-Fiqhi, Ibn 'Arafah 110.

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- Some jurists have forbidden the gathering of two judges in one city if they both possess the authority to issue judgments independently in all judicial proceedings. And this has been done for the necessity of administrative policy, among the contending parties, who...

...will judge them—out of fear of creating conflict regarding it (1).

– Some jurists have said regarding the position of Umar (RA) on certain Hadiths: Umar (RA) had adopted strictness in that matter for administrative reasons, i.e., out of consideration for public health (2).

– Besides, other evidence also exists (3).

In this broad sense, the subject of 'administrative policy' or politics is included in the concept of 'Rabbani' (God-fearing scholar), as Imam Tabari said: **(A Rabbani is one who, along with knowledge (Ilm) and jurisprudence (Fiqh), possesses administrative wisdom, correct management, and the ability to supervise subjects; and he remains active in ensuring their welfare in both this world and the religion)** (4).

This meaning is similar to the concept of politics expressed by Muslim philosophers. By politics, they intend a general meaning, i.e.: **(to mention all such political rules and policies whose benefits will be widespread for all those people who apply them in their conduct with people of their own level or with people of higher or lower levels than themselves)** (5). Therefore, the control of the soul is included in politics, which should be the first lesson of politics for humans (6). And by 'civil politics', their objective is to determine how each person should be regarding their own personal matters and character, so that they become completely independent of relying on the rulers. The society that can achieve this is what they call an 'ideal city' and the rules followed in it are called 'civil politics'. To them, the purpose of politics is not to perform public welfare activities. For this reason, this concept is rare to them or almost impossible to happen in reality; rather, they discuss this matter only from a theoretical and imaginary perspective (7).

(1) See: Shifa al-Ghalil fi Halli Mukhtasar Khalil 2/191; also see: Sharh al-Zurkani 7/235.
(2) See: At-Tahbir Sharh al-Tahrir 4/1846; and this can be considered a sovereign administrative step.
(3) See: Al-Hawi al-Kabir 8/461; Nihayat al-Matlab 16/282.
(4) Tafsir al-Tabari 6/544.

(5) Al-Siyasah, Al-Farabi 8.

(6) Al-Siyasah, Ibn Sina 87.

(7) See: Muqaddimah Ibn Khaldun 1/501.

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Second Meaning: Management of the ruler's activities and governance-related matters.

This is a more specific meaning than the first usage; which limits the application of the word 'Siyasah' (politics or governance policy) only to matters related to the ruler and the conduct of his administration.

Some jurists have defined 'Siyasah' as: Improving the condition of the subjects and the proper management of their affairs. (1)

Therefore, **(the Wali or ruler governs the subjects through 'Siyasah' or governance policy; i.e., he fulfills the responsibility of their affairs)**. (2)

And the duty of the Ulil Amr or ruler is: **(To preserve constitutional law or the laws of Siyasah)**. (3)

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(For this reason, the Imam or head of state shall not fully depend on another by entrusting the responsibility of governance to them while being preoccupied with luxury or worship; for even a trusted person may commit betrayal, and a well-wisher may deceive. Although according to the provisions of the religion and the requirements of the office of the Caliphate, this is a mandatory

duty assigned to him, it is nonetheless included within the constitutional rights of every member of the governed public.) (4)

This field is often referred to as 'Siyasah al-Ammah' or general state policy. Because, (the Imam is the person who has been entrusted with the responsibility of managing the general governance of creation). (5)

Jurists have discussed the regulations regarding judicial intervention in general state policy. Imam al-Qarafi mentioned that the judge's responsibility is (to ensure justice through the resolution of disputes, not to conduct general state policy). (6) Ibn Farhun, reviewing this opinion, stated that it is not absolute; rather, the judge also has the right to look into or intervene in many political matters. (7)

(1) See: Hashiyat al-Jamal 'ala Sharh al-Manhaj 3/26, Hashiyat al-Bujairami 'ala Sharh al-Khatib 3/10.

(2) Al-Binayah Sharh al-Hidayah 3/393.

(3) Al-Mi'yar al-Mu'rab 7/10 and see: Muqaddimah Ibn Khaldun 1/501.

(4) Kifayat al-Nabih 18/32.

(5) Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam 105, and see: Al-Ihkam 163, and Al-Dhakhirah 10/32.

(6) Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam 105.

(7) See: Tabsirat al-Hukkam 1/18, and see: Mu'in al-Hukkam 176, and Ar-Rassa in Sharh Hudud Ibn 'Arafa has hinted that Al-Qarafi's words can be understood to mean that the judge has no jurisdiction in certain specific areas of general governance policy, but this does not mean that he has none in any area. See: Sharh Hudud Ibn 'Arafa 436.

Common expressions of this meaning are: establishing politics, coming under its guidance, assigning responsibility for its affairs, and the conditions of those suitable for politics (1)... and similar matters which refer to the responsibilities of the Imam or Caliph in managing human affairs. And (the necessity of that politics has arisen which basically means leading their subjects through kings and Imams towards such commendable and satisfactory actions and a correct and strong path, for those who are loyal and obedient to them) (2).

Another common usage is the application of the word 'politics' (siyasah) in the case of the 'Chief of Police' (Sahib al-Shurtah) (3); and this is apparently because he has authority in managing the general affairs of the people. For the responsibility of criminal matters and protecting the city from the hands of thieves was entrusted to the Chief of Police; and he was also referred to as a 'Wali' (Governor) (4).

One of the uses of 'politics' in this sense related to the ruler's actions is what Ibn Taymiyyah wrote in his book 'Al-Siyasah al-Shar'iyyah fi Islah al-Ra'i wa al-Ra'iyyah'. Although he did not provide a definition of 'Sharia-based politics' (Siyasah Shar'iyyah) that clearly describes its purpose, the presentation method of the book brings out its purpose. The book is primarily based on verses concerning rulers, which is the word of Allah the Almighty: **"Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice."** [An-Nisa: 58]. He believes that the foundation of politics is built on two pillars, which are trustworthiness and justice: (Since the verse [mentions] delivering trusts to those entitled and deciding with justice...

...has made it mandatory; therefore, these two constitute the core essence of justice-based politics and good governance (5).

(1) See: Nihayatul Matlab 5/495 & 11/497 and 6/17, Hashiyatush Shirwani 3/68, Sharhu Muntahal Iradat 3/388, Naylul Maarib 2/385, Hashiyatut Tahawi Ala Maraqil Falah 588, Bada'ius Suluk 97.
(2) Al-Kharaj wa Sina'tul Kitabah, Qudama bin Ja'far 427.
(3) See: Al-Muhitul Burhani 2/69 & 2/80, Hashiyatu Ibnu Abidin 2/142, Sharhu Mukhtasaril Kharshi 4/149, Hashiyatul Adabi Ala Kifayatit Talib 2/94, Sharhuz Zurkani 4/376.
(4) See: Al-Jawahirul Mudiyyah fi Bayanil Adabis Sultaniyyah, Al-Munawi 417, Naqdut Talib li Zaghalil Masayib 41, Tabaqatush Shafi'iyyah Al-Kubra, As-Subki 3/272.
(5) As-Siyasah Ash-Shar'iyyah fi Islahir Ra'i wa Ar-Ra'iyyah 6.

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He has linked the first pillar—which is trust (Amanah)—with administrative responsibility and wealth, and the second pillar—which is justice—with adjudication among people regarding the rights of Allah and the rights of His creation.

All these matters are related to governance, whether they concern issues for which specific evidence exists or issues for which there is no specific evidence. Although, in the course of these discussions, issues related to matters other than the politics of rulers have also been addressed.

In this sense, the term politics (Siyasat) is closely related to the subject matter written under the title 'Al-Ahkamus Sultaniyyah' regarding the regulations of the Great Leadership (Imamate Uzma); as Al-Mawardi and Abu Ya'la Al-Farra have done in their books titled 'Al-Ahkamus Sultaniyyah'. There, under this term, they have gathered everything related to the qualities of leaders, their conditions, the methods of acquiring governing power, and the important administrative duties issued by them—which are related to the ruler and the principles of governance.

Similarly, other books written on the Imamate and administrative management are also included, such as: Ibn Jama'ah's 'Tahrirul Ahkam fi Tadbir Ahlil Islam', Al-Mawsili's 'Husnus Suluk li-Hafiz li-Dawlatil Muluk', and Ibnul Mubarak's 'Tawdihu Turuqil Istiqamah fi Bayanil Ahkamil Wilayah wal Imamah', along with other works. This is because their primary objective is the issues related to the politics of rulers. Likewise, books written on royal etiquette or Sultanic manners (Adab) and other similar books also fall into the same category.

We can say that: the use of politics in this sense is its true and original meaning, which immediately comes to a person's mind upon hearing it.

Third Meaning: The actions of the ruler in matters where there is no specific evidence.

Although this term has become very common among contemporary researchers of 'Siyasah Shar'iyyah'—as will be seen ahead—it was not so clear in the usage of the predecessors. Nevertheless, we find traces of its presence in various places in the statements of the jurists (Fuqaha).

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The most relevant texts on this subject are those found in the definition of 'Siyasa' (governance/policy) by Ibn Nujaym al-Hanafi. He states: (The explicit meaning of their statement is that Siyasa is the ruler performing an action he deems appropriate in consideration of the public interest, even if there is no specific evidence [dalil] for that action). Although he was explaining the concept of Siyasa to the Hanafis in relation to 'Tazir' (discretionary punishment), the definition he provided generally applies to any action performed by a ruler. Therefore, it can be said that this is

a general measure taken for the purpose of public interest or welfare. Consequently, this pertains to the 'Maslaha' or welfare-based ijtihad of rulers in matters where no specific 'Nass' (scriptural text) exists.

A similar definition has been provided by Imam Nasafi regarding Siyasa: (Maintaining the subjects through gentleness and firmness in a manner beneficial to them).

This also includes the statement of Ibn al-Qayyim regarding the prohibition of 'Tamattu' (Hajj) by Umar ibn al-Khattab (RA): (...Certainly, this and similar matters are partial administrative policies according to Maslaha or public interest, which change over time. However, in many cases, some have considered it an obligatory general Sharia for the Ummah until the Day of Judgment).

Similarly, Ibn Muflih's statement: (The manifest meaning of their statement is: fasting does not become mandatory by the ruler's command, although it is stated in 'Al-Mu'tab' and other books that obeying the ruler is obligatory unless it involves disobedience or sin; some have even mentioned a consensus [Ijma] on this. Perhaps the purpose of this is: regarding Siyasa, administrative management, and matters of Ijtihad; it is not an absolute or universal matter).

In explaining the Hadith regarding the condition of following the Sunnah of Abu Bakr and Umar (RA), they mentioned that it is: (related to biography and the knowledge of governance, not in the case of Shari'ah rulings or Ahkam). They have distinguished here between Siyasa (governance) and Hukm (ruling); because Hukm is essentially based on Nass or specific evidences, whereas Siyasa is not so.

(1) Al-Bahr al-Ra'iq 5/111.

(2) Tilbat al-Talaba fi Istilahat al-Fiqhiyyah 167.

(3) Al-Turuq al-Hukmiyyah 1/46.

(4) Al-Furu 3/227.

(5) Al-Hawi al-Kabir 16/163, Al-Tahbir Sharh al-Tahrir 8/3809.

Fourth Meaning: Ta'zir-based Punishment

This is a widely used term in the Hanafi school of law; because they generally understand 'Siyasah' or 'Siyasah Shar'iyyah' to refer to those punishments determined by the ruler to suppress and prevent crimes for which there is no fixed (Hadd) punishment prescribed in the Sharia.

Ibn Abidin said regarding the term 'Siyasah': (It is used in an even more specific sense involving reprimand and governance, even if it is carried out through execution. Just as they have said regarding sodomites, thieves, and stranglers, that if these crimes are repeated by them, then their execution as 'Siyasah' is permissible. This has been previously discussed regarding innovators).

He then quoted a definition as follows: (It is the intensification of punishment for a crime to uproot the source of corruption, for which a Shari'i ruling exists)(1).

He also narrated from others: (Siyasah is the stricter Sharia. It is of two types: oppressive Siyasah, which the Sharia has forbidden; and just Siyasah, which recovers rights from the oppressor, prevents many injustices, and suppresses mischief-makers)(2).

Therefore, Siyasah is: (That which is applicable to every crime regarding which the authority to make a decision is vested in the Imam)(3), and (Through Siyasah, the disobedience of the foolish can be prevented)(4).

For this reason, the mention of 'Siyasah' as an action of the ruler for the public interest (Maslahah) is found more frequently among Hanafi jurists in this chapter. Some of their statements in this

regard are:

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(1) Hashiyah Ibn Abidin 4/15; Dadeh Effendi attributed this to 'As-Siyasah ash-Shar'iyyah', pages 73-74 of 'Al-Binayah Sharh al-Hidayah', however, it does not exist in 'Al-Binayah' in these exact words. Dr. Fuad Abdul Mun'im, the editor of 'As-Siyasah ash-Shar'iyyah', pointed to a passage close in meaning on page 5/524 of 'Al-Binayah'.

(2) Hashiyah Ibn Abidin 4/15; this is the statement of At-Tarabulsi in 'Mu'inul Hukkam' page 169.

(3) Majma'ul Anhur 1/591.

(4) Al-Binayah Sharh al-Hidayah 13/62.

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If the Imam sees any benefit in it, he will act according to his own discretion, and as a result, it will be considered governance (Siyasat) and Ta'zir (1).

(And blackening the face (2) was included in governance. Consequently, when the ruler sees public benefit in it, he will have the right to do it) (3).

Therefore, governance (Siyasat) is to make a decision regarding a crime by considering public welfare. And clearly, this belongs to the heads of state.

(Special jurisdiction of the Imams), not of judges (Qazi) (4).

• For this reason, the Hanafis have considered several Sharia punishments as part of administrative policy (Siyasat); consequently, these are not unchangeable Sharia rulings, but rather administrative punishments for the sake of public welfare. These include:

- The provision of execution as a punishment for a person involved in heinous acts like those of the people of Lut (AS) (5).

- And the incident involving the Jew who killed a Jewish woman with a stone out of greed for her jewelry; as a result, the Prophet (PBUH) executed Qisas on him by placing him between two stones (6).

This is contrary to the Hanafi view that there is no Qisas (retaliation) in cases of murder with heavy objects. Therefore, they have interpreted this Hadith as follows: he (the Prophet PBUH) ordered it as an administrative (Siyasat) measure, because that person was known for causing corruption on earth. And when someone possesses such traits, the head of state has the right to execute them as an administrative measure (7).

- And the incident involving the woman from the Makhzumi tribe, who used to borrow household items and then deny it; consequently, the Prophet (PBUH) ordered her hand to be amputated (8). This is contrary to the Hanafi school of thought, which holds that the hand of someone who denies borrowed items is not amputated; therefore, they have considered (it as Siyasat)...

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(1) Al-Ikhtiyar li-Ta'lil al-Mukhtar 4/91.
(2) At-Taskhim: This means blackening the face with coal. See: Talabat al-Talaba fi Istilahat al-Fiqhiyyah (133).
(3) Fath al-Qadir 7/477.
(4) Al-Bahr al-Ra'iq 5/18.
(5) See: Al-Hidayah 2/347.
(6) Reported in Bukhari (6879) and Muslim (1672) from a Hadith narrated by Anas ibn Malik (RA).

(7) See: Al-Mabsut 26/124.

(8) The primary incident is cited in Bukhari (3733) and Muslim (1688) from Aisha (RA). The detail regarding the denial of household items is present in Imam Muslim's narration.

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...either that the Hadith was abrogated or it would be considered Siyasa (administrative policy), since this act had been repeatedly committed by her (1).

And other such examples (2).

• Similarly, they have considered several punishments issued by the Rightly Guided Caliphs as part of 'Siyasat' or administrative policy. These are administrative measures that include penalties for offenses not explicitly defined by Sharia. Its...

Among them are:

- The account regarding the execution of certain women by Abu Bakr (RA) for apostasy; although this contradicts the general opinion of the jurists regarding the non-execution of women for apostasy. Therefore, they have applied this to one of two reasons: either there was a provocation of war on their part, leading to their execution for that reason; or it was issued by As-Siddiq (RA) on the basis of public interest and administrative policy (Siyasa) (3).

- The account of the Companions executing individuals involved in the acts of the people of Lut is also included under 'Siyasa' or administrative policy (4).

- The punishment of flogging a false witness by Umar (RA) is also part of 'Siyasa' or administrative policy. This is primarily based on the principle of public shaming or exposure, as it is also a type of 'Ta'zir' or corrective punishment (5).

And various other proofs of the application of 'Siyasa' or administrative policy by the Companions (6).

Similarly, they have mentioned several other 'Ta'zir' or corrective punishments that have been validated administratively or through governance (Siyasa). These include:

(1) See: Tabyin al-Haqa'iq 3/217.
(2) See: Tabyin al-Haqa'iq 3/225, As-Siyasa ash-Shar'iyya, Luddah Afandi 77 & 80.
(3) See: Al-Mabsut 10/110.
(4) See: Tabyin al-Haqa'iq 3/181.
(5) See: Al-Mabsut 16/145, Al-Hidaya 3/131, Tabyin al-Haqa'iq 4/242.
(6) See: Bada'i' as-Sana'i' 7/299, Al-Mabsut 24/24, As-Siyasa ash-Shar'iyya, Luddah Afandi 78 & 79.

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Banishing the adulterer (1); and combining flogging and stoning (Rajm), or flogging and banishment (2); executing a serial killer with a heavy object, or by strangulation, or by drowning (3); and executing a Dhimmi who has insulted the Prophet (peace and blessings of Allah be upon him), even if he embraces Islam after being apprehended (4); and other similar offenses (5).

Therefore, 'Siyasa' (administrative punishment) is used here in the sense of 'Ta'zir' (discretionary punishment). For this reason, one is mentioned in conjunction with the other, indicating that the essence of both is the same (6).

Ibn Abidin states: (Apparently, Siyasa and Ta'zir are synonymous. This is why they have coupled one with the other for the purpose of explanation, as has occurred in Al-Hidaya, Az-Zayla'i, and

other books) (7).

It can be said that: Siyasa is the basis or source of Ta'zir, not Ta'zir itself. This is why it is mentioned in the book Al-Hidaya regarding a person who marries a Mahram woman: (He shall be given the severest punishment of Ta'zir as Siyasa, not as a Sharia-stipulated Hadd) (8).

Their statement further strengthens this matter: (In the case of Ta'zir, striking is in accordance with Sharia, and whatever is in addition to it...

...what exists shall be considered as Siyasah). (9)

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(1) See: Al-Hidayah fi Sharh Bidayat al-Mubtadi, 2/344.

(2) See: Majma' al-Anhur, 1/590.

(3) See: Majma' al-Anhur, 2/622.

(4) See: Hashiyah Ibn Abidin, 4/63. It would be wonderful to mention here that Ibn Abidin noted that he did not find this punishment in Hanafi books for those who embraced Islam. Rather, he relied on what Shaykh al-Islam Ibn Taymiyyah narrated on their behalf; thereafter he said: (He narrated this from our Madhhab and he is reliable, therefore it is acceptable). See: Hashiyah Ibn Abidin, 4/215.

(5) See: Al-Mabsut, 9/135; Tabyin al-Haqa’iq, 3/179; Durar al-Hukkam, 2/80; Al-Inayah Sharh al-Hidayah lil-Babarti, 2/225; As-Siyasah ash-Shar’iyyah by Lindah Effendi, 95-102.

(6) See: Al-Ikhtiyar li Ta’lil al-Mukhtar, 4/86; Tabyin al-Haqa’iq, 3/174; Al-Bahr al-Ra’iq, 11/5; Hashiyah Ibn Abidin, 4/8; Al-Lubab fi Sharh al-Kitab, 3/188; Al-Jawahir al-Nayirah ‘ala Mukhtasar al-Quduri, 2/172.

(7) Hashiyah Ibn Abidin, 4/15.

(8) Fath al-Qadir by Ibn al-Humman, 5/269; and see: Tabyin al-Haqa’iq, 3/179; Hashiyah Ibn Abidin, 4/25.

(9) Al-Inayah Sharh al-Hidayah, 7/467; and see: Al-Binayah, 9/197.

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This indicates that Siyasah (administrative policy) is not primarily Ta'zir (discretionary punishment), but rather the public interest (Maslahat) upon which it is based. In the book 'An-Nahr al-Fai'q' it is stated: (It is permissible on the basis of being a Siyasah-based Ta'zir), meaning public interest or Maslahat.

Although this usage is prevalent among the Hanafis and they have a specific terminology regarding this, it is also used by others. They use the word Siyasah in the sense of Ta'zir-based punishment. For example:

– The Shafi'is do not consider it appropriate to transfer a person who is to take an oath from his city to another place. However, when the precedent was presented to them that Abu Bakr (may Allah be pleased with him) had brought Qays ibn al-Makshuh from Yemen to Medina under arrest so that he might take the oath there; and similarly Umar (may Allah be pleased with him) had brought the people of Qasamah (oath related to blood-money) from a distance of 22 days' travel to Mecca so that they might take the oath at the Hijr (Hatim); then they (the Shafi'is) said: (They primarily did this on the basis of that Siyasah or administrative authority which is related to expert opinion and public interest).

– (Some of them have said: This does not depend on his demand or claim; rather, what has been revealed from the husband's side is an act contrary to etiquette, due to which he is deserving of discipline through administrative management and Siyasah).

– (But the judge's knowledge did not encompass the true state of the evidence, and imprisonment

in a nearby matter is consistent with the method of Siyasah, so that rights are protected from being lost).

And more examples of this nature. The Hanafis' application of the word Siyasah does not mean that its use in other contexts would be incorrect. For this reason, Ibn Nujaym noted and said: (I have not seen any definition of Siyasah in the statements of our Mashayekh). Thereafter, he mentioned Al-Maqrizi's definition in support of it, although it is a general definition that is only for Ta'zir-based punishment...

...is not specific to.

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(1) An-Nahr al-Fa'iq 3/135.

(2) Al-Hawi al-Kabir 17/115.

(3) Nihayat al-Matlab 15/29, Rawdat al-Talibin 8/333.

(4) Nihayat al-Matlab 15/115.

(5) Al-Hawi 14/176-177, and Al-Funun 1/381, and 2/498.

(6) Al-Bahr al-Ra'iq 5/76.

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We further see that Muhammad ibn al-Hasan used to refer to the letter sent by Umar to Abu Musa al-Ash'ari as 'Kitab al-Siyasa' (The Book of Politics) (1).

Among them, the application of the word 'Siyasa' is found not only in criminal matters but also in the achievement of public welfare. For example, they mentioned the case of a person who voluntarily freed a slave on behalf of a living person; in such a situation, the 'Wala' (right of inheritance and patronage) will be established for the Muslims due to Siyasa or policy reasons (2).

Fifth meaning: Paths that reveal the truth.

One of the important expressions of Siyasa Shar'iyyah is its application in the paths that reveal the truth. This broadens the field of evidence and testimony, and it is not limited to immutable specific boundaries; because through this, truth is established, and public welfare and justice are implemented.

This is close to the Hanafi method (3). However, it can be said that care has been taken here regarding a specific aspect related to the method of proving the truth, so there is no harm in emphasizing it, even though it could be included under a general application.

(1) See: Badai' al-Sanai' 7/9.
(2) See: An-Nutraf fil Fatawa, Abul Hasan al-Sughdi 434.
(3) Among the Hanafis, the term Siyasa can extend to include signs that assist in arriving at the truth. For this reason, Dadah Efendi, in the book 'Siyasa Shar'iyyah' (106 - 117), has mentioned certain rulings that transcend the boundaries of penal codes and punishments and are related to the consideration of public welfare. There, he mentions the consideration of circumstantial evidence, signs, and testimony, and this is the primary basis here. Since these methods are closely related, anyone who considers public welfare when administering punishment for a crime and resorts to Siyasa or administrative tactics—with the goal of achieving public interest and removing harm—must also consider the signs that aid in reaching the truth. There are some common legal issues between both subjects, such as applying pressure on an accused person to obtain a confession and similar matters. The primary driving force behind the consideration of Siyasa is the need to expand options for rulers in certain matters that do not contradict Sharia, so that oppression can be prevented and the corrupt can be suppressed. This encompasses both

applications, so their...

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It can be brought under a common definition.

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Among those who have most clearly expressed their opinions on this matter is Ibn al-Qayyim, in his book ‘At-Turuq al-Hukmiyyah fis-Siyasah ash-Shar’iyyah.’ At the beginning of the book, he mentions a question that indicates the purpose of Shari’ah-based politics. He said: (A question was asked regarding judgment by a ruler or judge based on his foresight or signs through which the truth is revealed to him, and accepting evidence through signs, without being limited only to external testimony and confession) (1).

Ibn al-Qayyim says: (Indeed, politics is of two types: one is oppressive politics which the Shari’ah has forbidden, and the other is just politics which extracts the truth from the wicked oppressor, and that is a part of the Shari’ah itself) (2).

Ibn Farhun followed the same path in his book ‘Tabsira al-Hukkam.’ He says: (Politics is of two types: one is oppressive politics which the Shari’ah has forbidden, and the other is just politics which extracts the truth from the oppressor, prevents many injustices, and deters mischief-makers. Through this, the objectives of the Shari’ah are achieved. Therefore, the Shari’ah necessitates returning to it and relying on it for revealing the truth) (3).

According to this meaning, some examples of Shari’ah-based politics are:

– Judging by making artisans and similar professionals accountable. Artisans shall be held liable

for what they take to manufacture or repair if they engage themselves in that work, whether they do it for a fee or without a fee (4).

– This includes observing the condition of the accused, conducting detailed inquiries about them, and considering the signs associated with them: (If we release every one of them by making them take an oath, while the prevalence of their mischief and theft in the land is well known, and if we say: ‘We will not apprehend him without two just witnesses’, then this action would be contrary to Shari’ah-based politics) (5).

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(1) At-Turuq al-Hukmiyyah, 1/3-4.

(2) At-Turuq al-Hukmiyyah, 1/7-8.

(3) Tabsira al-Hukkam, 2/137.

(4) Tabsira al-Hukkam, 2/323; and see: Mu’in al-Hukkam, 200; and the discussion on making artisans accountable in Shari’ah-based politics during the caliphate of Ali ibn Abi Talib (may Allah be pleased with him) will follow.

(5) At-Turuq al-Hukmiyyah, 1/32.

- (If a person fights a case on their own behalf and appears before the judge three times along with the opponent, they do not have the right to appoint any representative or lawyer unless they become ill or intend to travel. Ibn al-Attar said: They must swear an oath that they are not making

a pretext of travel for the purpose of appointing a lawyer. If they refuse to take the oath, they cannot appoint a lawyer. Therefore, taking this oath here is part of 'Siyasah Shar'iyyah' or Shariah administrative policy.) (1)

Sixth Meaning: Usage in a Lexical Sense.

And that is to use this terminology in its lexical sense, which conveys the meaning of the proper conduct of a matter and its excellent management. And: (Siyasah is to take responsibility for the maintenance or management of a matter for the purpose of its rectification.) (2)

Thus, you will find the word 'Siyasah' associated with many subjects. For example, it is said: Siyasah or management of people (3), Siyasah of the world (4), Siyasah of the Ummah (5), Siyasah of the subjects (6), Siyasah of the general public (7), Siyasah of the territory (8), Siyasah of the army (9), Siyasah of war (10), Siyasah of people in the field of education (11), Siyasah of child-rearing (12), Siyasah of subordinates (13), and Siyasah of livestock (14)... etc. In all the aforementioned cases, the objective is to fulfill the responsibilities of these matters and ensure their excellent management.

(1) Tabsirat al-Hukkam 2/211.

(2) Al-Binayah Sharh al-Hidayah 3/393.

(3) See: Ad-Dakhira 13/286, Tuhfat al-Muhtaj 9/70.

(4) Tuhfat al-Muhtaj 9/75.

(5) See: Sharh al-Muntaha al-Iradat 3/389.

(6) See: Ad-Dakhira 10/31, Mughni al-Muhtaj 5/421.

(7) See: Kashf al-Asrar wa Hatk al-Astar, Al-Baqillani 699.

(8) See: At-Tajrid, Quduri 12/5334.

(9) See: Ad-Dakhira 4/246.

(10) See: Nihayat al-Matlab 11/463, Ad-Dakhira 2/256.

(11) See: Al-Madkhal, Ibn al-Hajj 103.

(12) See: Al-Madkhal, Ibn al-Hajj 4/295.

(13) See: Mukhtasar al-Tirmidhi, Tufi 2/343.

(14) See: Nihayat al-Matlab 15/570, and see: 5/293.

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Close to this is its use in conjunction with 'firmness' (hazm). It is then said: "This is part of firmness and good governance (siyasat)." Or it is used as a field of praise for rulers, stating that he has governed well.

Therefore, the governance (siyasat) of people means adopting gentleness towards them and attempting to reform them through a gradual approach and kindness. For example, Ibn al-Hajj, while describing the biography of a person, says: (My Shaykh Hasan al-Zubaidi, may Allah have mercy on him, used to say: I do not want any righteous person or scholar to come to me, because they have no need of me and I have no need of them. Rather, I want someone who is fleeing from the court of his Lord, so that I may return him to his Lord—or words to that effect. There is no doubt that the person who sits in the market, does not come to scholars and righteous people, is not included among them, and is content in this state, is a fugitive from his Lord's court. Therefore, the scholar's duty regarding such a person is to guide them until he delivers them to his Lord's court.)

He says: (An example of this is a person who possesses virtue and goodness, and Allah has placed him in one of the ultimate spiritual stations; when someone comes to him wanting to return to Allah and repent, he wants to immediately bring that person to his own level or station, even

though no prior guidance or gradual measures had been taken for him.)

(The followers of Imam Malik, may Allah have mercy on him, agree on this matter that Imam Malik did not have any 'secret book'. And it contained many objectionable matters which no one else besides Imam Malik would consider permissible; so how could that be possible given his exalted status? What is narrated about Imam Malik—that he gave special concessions only to the Caliph while excluding others—the reality was exactly the opposite. Rather, he was firm with them and managed them skillfully, so as to bring them down from their level of nobility to the level of common Muslims. This was evident through his behavior with the Caliph during the recitation of the Muwatta.)

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(1) Sharh al-Siyar al-Kabir, as-Sarakhsi, 1/192.

(2) See: al-Isharat al-Ilahiyyah fil Mabahith al-Usuliyyah, at-Tufi, 2/344.

(3) Al-Madkhal, Ibn al-Hajj, 2/87.

(4) Al-Madkhal, Ibn al-Hajj, 3/152; see also: 1/113.

(5) Al-Madkhal, 2/192.

The difference between this linguistic meaning of the word 'siyasat' and its first meaning is: here, its use is limited solely to the management and reform of the subject matter to which it is associated. Therefore, it is restricted to the management of a specific matter, and it is possible to use another word instead of 'siyasat' here without changing the meaning. In contrast, the first meaning is inherently directed towards public welfare and the process of reform, whether it pertains to general or specific matters.

...regardless of what it is related to. In this case, the word 'Siyasa' has a specific and effective meaning.

Summary of this introduction:

After this investigation into the use of the term 'Siyasa' by previous jurists, we can derive the following important findings:

First: There was no continuous or clear use of this term among early jurists. The reason for this was the lack of necessity for such use and the absence of any benefit derived from it. Therefore, there was no meaning for them in being committed to a single usage. As evidence of the lack of its necessity, Ibn Nujaym (970 AH) says: "I have not seen any definition of Siyasa in the statements of our Sheikhs." Thus, their avoidance of providing a definition reveals the lack of its necessity.

Second: Using a term in a specific sense does not mean its use in another sense is rejected. Rather, its upper limit is that the usage of the term in that sense was acceptable; it does not mean that the other meaning is not correct.

Third: Based on this, we do not consider it necessary to conduct a detailed analysis of any of these definitions, describe their flaws, or propose better ones for their formulation. This is because the matter relates to a terminology that they did not intend to make comprehensive and exclusive (Jami-Mani) for any specific subject. Therefore, there is no justification for such detailed analysis, nor is there any benefit from it. Rather, the main purpose is to know in what sense they used this term, not to derive a self-contained definition for Siyasa.

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(1) Al-Bahr al-Ra'iq, 5/76.

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Fourth: The general basis of these uses is public-interest-oriented Ijtihad; it is an effort to achieve public welfare in a specific matter. This can be broad enough to include all types of public welfare—both religious and worldly, general and special. Again, it may be limited only to the actions of the ruler, or it may be narrowed down to specific conducts of rulers or judges.

Even matters related to Sharia evidence or text (Nass) are dependent on public-interest-oriented politics for their implementation, observation of changing circumstances, and enforcement. Therefore, a comprehensive meaning of politics can be derived from the sum of these meanings, which is related to public-interest-oriented Ijtihad.

Fifth: Most of these uses are limited only to the word 'Politics'; the compound term 'Sharia Politics' is not used. This compound term has appeared only in certain specific fields; such as its use by Hanafi jurists in the case of punishment (Ta'zir), or its use in the case of auxiliary means in uncovering the truth in the judicial system. Again, it has also been used in cases like the title of Shaykh al-Islam Ibn Taymiyyah's book. For those who use the word 'Politics' in a general sense, this is essentially their intention. Therefore, generally speaking, politics refers to politics that follows the Sharia. Because when the word politics is mentioned in the context of approval, it refers to Sharia Politics. And in the case of detailed discussion, oppressive politics...

On the contrary, just politics is mentioned.

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Second Introduction

Definition of Siyasah Shari'ah according to modern researchers

While it has been established that the term Siyasah Shari'ah (Sharia-compliant politics) was not used by earlier jurists to express a specific meaning, it has taken on a different form in the current era. The emphasis on this terminology among contemporaries has increased, and a specific meaning has emerged. It is a concept that signifies the administration of state affairs and public order by achieving public welfare and preventing harm in accordance with the rulings of Sharia.

Although the method of later jurists used 'Siyasah' in specific areas like the penal code (Hudud) and punishments (Ta'zirat), in reality, its scope is much broader. It includes all administrative activities, and through it, what the Sharia desires and intends—namely, removing hardships and ensuring public welfare—is achievable. (1)

Here we can see that every researcher of Siyasah Shari'ah tries to provide an ideal definition of it. All these definitions highlight the presence of three basic pillars of Siyasah Shari'ah, and they are:

1. Its association with the conduct of governance.
2. Efforts to achieve public welfare.
3. Absence of conflict with Sharia rulings.

However, we observe differences of opinion among contemporaries in determining the matters included within Siyasah Shari'ah. They are divided into two main schools of thought regarding which Sharia rulings fall within the boundaries of Siyasah Shari'ah:

(1) See: As-Siyasah Ash-Shar'iyyah wa al-Fiqh al-Islami, Abdur Rahman Taj, pages: 31 - 33.

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First stream: Those who believe that As-Siyasah Ash-Shar'iyyah (Sharia politics) includes all Sharia rulings, whether...

Whether explicitly mentioned or not.

Included therein is the definition of **As-Siyasah Ash-Shar'iyyah** by Sheikh Abdul Wahhab Khallaf. He states: (The management of the public affairs of the Islamic state in a manner that ensures public welfare and averts harm; which does not transgress the boundaries of Sharia and its universal principles, even if it does not align with the specific methodologies of the Mujtahid Imams) (1).

Sheikh Muhammad Al-Maraghi states: (**As-Siyasah Ash-Shar'iyyah** refers to overseeing the interests of the subjects in accordance with the rules of Islamic Sharia. In matters where there is a clear ruling in the Book of Allah and the Sunnah of His Messenger ﷺ, or where the Muslims have reached a consensus—whether mandatory or prohibited—it is necessary to follow it and not deviate from it. It is not permissible for the head of state to establish any new regulation that conflicts with or undermines this. Furthermore, matters for which there is no explicit ruling or consensus constitute the domain of **Ijtihad**) (2).

In his work '**As-Siyasah Ash-Shar'iyyah**', Sheikh Ali Al-Khafif followed a methodology that clearly indicates he views **As-Siyasah Ash-Shar'iyyah** as a comprehensive concept. This is evident as he began the subject by discussing the rulings pertaining to the Caliphate and the Imams (rulers),

followed by an examination of the mutual relationship between the ruler and the ruled. He then presented the political conduct of the Messenger ﷺ, demonstrating that it encompasses: (the administrative systems he introduced, the legal rulings he enacted as Sharia, the matters he sanctioned, and the measures he adopted concerning **mu'amalat** [social and commercial transactions] and administrative methods) (3).

There are many others as well (4).

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(1) **As-Siyasah Ash-Shar'iyyah**, Abdul Wahhab Khallaf 14.
(2) **Al-Ijtihad fil Islam** 55.
(3) See: **As-Siyasah Ash-Shar'iyyah**, Ali Al-Khafif, **Mawsu'atul As-Siyasah Ash-Shar'iyyah** 3/107; similarly, Sheikh Muhammad As-Sayyis, in **As-Siyasah Ash-Shar'iyyah**, **Mawsu'atul As-Siyasah Ash-Shar'iyyah** 4/13 and subsequent pages.
(4) **As-Siyasah Ash-Shar'iyyah Haltu Giyabi Hukmin Islamiyyin An Diyaril Muslimin**, Ahmed Muhyiddin Salih 22; **Al-Mu'ayana Bainal Masalih**, Ahmed At-Tayy 196-197; **Al-Fiqhus Siyasi Indal Imam Ali bin Abi Talib**, Qamaruzzaman Gajal 43-45; **Al-Marjiyyah Fi Daw'is Siyasah Ash-Shar'iyyah**, Taha Az-Zaidi 35-37; **Qira'atun Fi Kutubis Siyasah Ash-Shar'iyyah**, Muhammad Shakir Ash-Sharif 6; **Tasile Fiqhil Awlawiyyat**.

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Second Opinion: Those who believe that **Siyasah Shar'iyyah** (Sharia politics) pertains to matters for which no (explicit) scriptural text (**nass**) or evidence exists.

The following are noteworthy among them:

In defining **Siyasah Shar'iyyah**, Sheikh Abdullah Siyam states: "(In matters where) there is no (specific) scriptural text (**nass**)—to identify the path of justice and its indicators and hallmarks by

means of intellect or reason; and for this, the general principles, rules, and regulations of Sharia..."

"...taking help and guidance from the regulations."[1]

Sheikh Abdur Rahman Taj explained that politics is included in every subject of Fiqh. However, it is specifically related to those regulations that do not remain static in one state, but rather differ with changes in time and circumstances, and for which we do not find any (specific) evidence.[2]

In defining Siyasa Shari'iyyah (Sharia-based politics), Dr. Abdul Al-Atawa says: "To manage all such matters of the Islamic state regarding whose rulings no clear text (*nass*) has been narrated, or which have the potential for change and transformation in view of the interests of the Ummah, and which are consistent with the rulings of Sharia and its general principles."[3]

And others.[4]

= Application in protecting the religion in terms of Siyasa Shari'iyyah, Muhammad Hammam 265; Sharia regulations for contemporary political problems, Atiyyah Adlan 14-15; The impact of *Maslahah* or public interest in Siyasa Shari'iyyah, An-Nu'aymi 131; Principles of *Ijtihad* in Siyasa Shari'iyyah, Al-Ani 78-79; Women's rights and political rights in Islam, Mahmud Abu Huzair 22-23; Siyasa Shari'iyyah, Akram Kassab 27; Codifying Islam and its regulations, Abdur Rahman Al-Kasim 83।

(1) As-Siyasah Ash-Shari'iyyah wa Qawa'idul Adl wal Insaf fil Qanun, Abdullah Siyam, Mawsu'atul As-Siyasah Ash-Shari'iyyah-er antorbhukto 3/251।

(2) See: As-Siyasah Ash-Shari'iyyah wal Fiqhul Islami 35-36।

(3) Al-Madkhal ila Siyasah Ash-Shari'iyyah, Abdul Al-Atawa 56।

(4) See: As-Siyasah Ash-Shari'iyyah, Abdullah Al-Qadi 35-36; The Prophet's (PBUH) financial and economic activities in Siyasa Shari'iyyah, Muhammad Mahmud Abu Lail 20; Siyasa Shari'iyyah and private law 24; Results and effects in Siyasa Shari'iyyah regulations, Muhammad As-Samarrai 59; and this is the manifest purpose of Mawsu'atul As-Siyasah Ash-Shari'iyyah 4/147, Al-Albani; As-Siyasah Ash-Shari'iyyah।

We can say that there are two concepts of Siyasa Shari'iyyah (Sharia politics): a general concept expressed by the first school, and a specific concept presented by the second school (1).

The difference between the two schools is related to matters proven by the definitive evidence of Sharia (revealed texts): such as the implementation of the penal code (*Hudud*), *Qisas* (retribution), and consensus-based judicial rulings in chapters like buying and selling, usury (*Riba*), and marriage, etc. Those who believe that Siyasa Shari'iyyah is only related to those matters for which there is no clear *nass* (text) do not consider these subjects part of Siyasa Shari'iyyah, even though they may occur within the scope of general politics. These are not subjects of Siyasa Shari'iyyah to them because the role of authority here is established only on obedience and implementation, and there is no room for political *Ijtihad* (independent reasoning). On the other hand, those who consider it a general concept include all these matters within it, as they are an inseparable part of politics and the authority has a role in them.

This difference of opinion between the two schools is primarily terminological, related to naming, and it is a common issue. However, the view of those who say that Siyasa Shari'iyyah is only related to those matters for which there is no clear *nass* is stronger; because in definitive matters, the role of Siyasa Shari'iyyah is limited to the implementation of the ruling and the

activities associated with it.

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...remains limited. On the other hand, in cases where no clear 'Nass' (textual evidence) exists, the role of politics becomes more prominent. This is precisely what distinguishes this concept and makes its impact clear. More detailed explanations on this matter will be provided during the discussion on the perspective of Siyasah Shar'iyyah.

The Science of Siyasah Shar'iyyah:

Several contemporary researchers have characterized Siyasah Shar'iyyah as an independent science.

= Ali az-Zahrani 23, Al-Madkhal ila as-Siyasah ash-Shar'iyyah wa al-Anzimah al-Mar'iyyah; Nasir al-Ghamdi 33, As-Siyasah ash-Shar'iyyah wa Atharuha fil Hukmi ash-Shar'i; Nusaibah al-Buqa 46, Ad-Dirasah fil Siyasah ash-Shar'iyyah wal Fiqhil Islami; Wahbah az-Zuhayli 10, As-Siyasah ash-Shar'iyyah; Ibrahim Abdul Rahim 44.
(1) See: Adwa ala as-Siyasah ash-Shar'iyyah, Saad Matar al-Utaibi 18-20; Fiqh al-Ma'alat wa Atharuhu fil 'Ilaqat ad-Dawliyyah, Hayem al-Bassam 47; As-Siyasah ash-Shar'iyyah, Ibrahim Abdul Rahim 42-43; As-Siyasah ash-Shar'iyyah 'Indal Juwayni, Omar az-Zabdani 32.

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Among them is Sheikh Abdul Wahhab Khallaf, in his book titled ‘As-Siyasah ash-Shar'iyyah’. There, he has defined Siyasah Shar'iyyah as a distinct discipline. He stated: (The science of

Siyasah Shar'iyyah is a discipline that discusses the conduct of the affairs of the Islamic state through laws and systems consistent with the core principles of Islam, even if no specific evidence exists for every single arrangement) (1).

Thereafter, he organized the book in such a way that it discusses constitutional politics, general authorities, foreign policy, and financial policies.

Similarly, Sheikh Muhammad al-Banna has said: (It is a discipline that discusses the conduct of the affairs of the Islamic state through laws and systems consistent with the principles of Islam, even if no specific evidence exists for every single arrangement) (2).

Sheikh Rizq al-Zalbani stated: (Siyasah Shar'iyyah is a discipline that discusses the management of collective affairs in accordance with the requirements of wisdom—not being contrary to what the Messenger (peace and blessings of Allah be upon him) brought—even if partial evidence does not exist for every step) (3).

And many others from the contemporary period (4).

They have cited several logical reasons in favor of considering Siyasah Shar'iyyah as an independent discipline, which include:

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(1) Al-Siyasah al-Shar'iyyah, Abdul Wahhab Khallaf, p. 4.
(2) Al-Siyasah al-Shar'iyyah, Muhammad al-Banna, included in Mawsu'at al-Siyasah al-Shar'iyyah, 2/147; as agreed by Al-Jaza'iri in 'Al-Siyasah al-Shar'iyyah', p. 12.
(3) Al-Siyasah al-Shar'iyyah, Rizq Muhammad al-Yalbani, included in Mawsu'at al-Siyasah al-Shar'iyyah, 4/160.

(4) See: Al-Madkhal ila al-Siyasah al-Shar'iyyah, Abdul Aal al-Atwa, pp. 10-11 and 57; Al-Siyasah al-Shar'iyyah wa 'Alaqatuha bi al-Tanmiyah al-Iqtisadiyyah, Fuad Abdul Mun'im, pp. 39-45; 'Ilm al-Siyasah al-Shar'iyyah 'ind al-Imam Ibn al-Qayyim, Abdullah al-Zuhaili; Adwa' 'ala al-Siyasah al-Shar'iyyah, p. 31; Al-Madkhal ila al-Siyasah al-Shar'iyyah wa al-Anzimah al-Mar'iyyah, p. 35; Al-Siyasah al-Shar'iyyah, Abdullah al-Qadi, p. 37.

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1- The importance of being diligent regarding subtle specialized matters, as is the practice of modern researchers; for they have established an independent science for every field, such as their writings on judicial science ('Ilm al-Qada), inheritance science ('Ilm al-Fara'id), and other subjects (1).

2- The connection of Siyasah Shar'iyyah (Sharia-based politics) with public welfare; and sciences are distinguished by their subject matter and the specific issues (mas'ala) they address.

3- Facilitating the study of the issues related to it (2).

4- The necessity of organizing the subject matter of Siyasah under an independent science, which will unify its scattered topics and grant it full status in the field of research, especially due to the scarcity of ancient writings on this subject (3).

There are two perspectives for reviewing the science of Siyasah Shar'iyyah here:

The first perspective is regarding nomenclature: And this matter is broad. Whether a specific cognitive field is considered an independent science or a subset of another science is primarily a terminological matter. Therefore, whether it is called the science of Siyasah, a chapter on Siyasah, or the field of Siyasah, it will not affect the subjects discussed here.

The second perspective is regarding the subject matter: This results in a clear and beneficial

outcome. Because issues related to state functions in general politics and modern law are confined to a single chapter; where its issues are discussed and its goals and objectives are clarified. It has great utility in making it easier to reach these issues and bringing the understanding of its content closer. It also helps in forming a comprehensive concept of the issues in this chapter.

(1) See: Al-Siyasah al-Shar'iyyah fi al-Ahwal al-Shakhsiyyah, p. 23.

(2) See: Al-Siyasah al-Shar'iyyah wa 'Alaqatuhu bi al-Tanmiyah al-Iqtisadiyyah, Fuad Abdul Mun'im, p. 45.

(3) See: Al-Siyasah al-Shar'iyyah wa Atharuha fi al-Hukm al-Shar'i al-Taklifi, p. 60.

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Third Introduction

The Boundaries of Subjects Included within the Scope of Siyasah Shar’iyyah (Sharia Politics)

We mentioned in the previous introduction that Siyasah Shar’iyyah is related to matters concerning the administrative system in managing the public interest. It will define a boundary for those Sharia matters that fall outside the scope of Siyasah Shar’iyyah and will not be included in its discussion. These include:

1. Definitive Rulings:

Not every definitive ruling of Sharia will be part of Siyasah Shar’iyyah. This is because Siyasah Shar’iyyah has no influence on the primary ruling. Politics or Siyasah is primarily concerned with the general management of public interest, whereas a definitive ruling is a matter that must be followed and obeyed. Definitive rulings here include the principles of Aqidah (creed), Ibadah (worship), and Akhlaq (character/ethics).

However, Siyasah Shar’iyyah applies to these from two perspectives:

First perspective: Executive measures related to the application of such rulings for the sake of public interest. For example, Qisas (retribution) is a definitive Sharia ruling, but the process of implementing Qisas—whether through the judicial method of proof or the method of execution—which depends on politics related to public interest, is included in Siyasah Shar’iyyah.

Second perspective: Various situational factors influencing the ruling, such as extreme necessity (Darurah), special need (Hajat), incapacity, and similar matters, which are included in the principle of 'balancing benefits and harms' to be discussed ahead. Therefore, Siyasah Shar’iyyah has a role in this regard.

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Apart from these two perspectives, if a definitive ruling pertains to a general matter, the role of the administration is merely to implement it. Consequently, it will not be part of Sharia politics. However, according to some contemporary scholars mentioned earlier, whether rulings are directly proven by evidence or not, they are considered part of politics...

...the matter is different. However, this terminological issue is simpler.

2. Pure Acts of Worship:

Fundamentally, there is no scope for Shari'a politics in matters of worship, whether it be obligatory (wajib) or recommended (mustahabb), or regarding the conditions, pillars, and impediments of worship. Essentially, politics has no entry into the domain of worship for two reasons:

First reason: Politics is a public welfare management system within the boundaries of Shari'a. Therefore, politics has no right to change anything within the prescribed limits of worship.

Second reason: There is no benefit in political interference regarding matters of worship. However, if any part of worship is linked to general public welfare, then Shari'a politics remains valid up to the extent of that general welfare.

An example of this is: determining the specific time for establishing a congregation (jama'at) in the mosque. Fundamentally, performing prayer in congregation is a matter of worship, which does not fall under the specialized field of Shari'a politics. However, according to Shari'a, the timeframe for performing prayer is flexible. Now, for the sake of general public welfare, there may be a demand to set a specific time for the congregation so that people can gather. Therefore, as it relates to general public welfare, determining the timeframe for performing this obligatory act would fall under Shari'a politics.

3. Measures, Nisab, and Shari'a Penalties:

No one has the right to change the boundaries regarding time, place, number, or quantity that the Shari' (the Lawgiver) has prescribed. Furthermore, there is no inherent benefit in changing these boundaries.

The nisabs for Zakat—such as the nisab for livestock, gold and silver (the two currencies), crops produced from the land and the amount payable from them; inheritance rights or shares of succession; the number of lashes in 'hadd' or penal codes; the duration of 'iddah'; and the number of divorces, etc. All of these are measures determined by the Shari’a Legislator, where no one has the right to change anything.

4. Review of Fiqh Rulings Not Related to Public Interest:

Thus, in those rulings which are not linked to any general public interest, there is no intrusion of 'Siyasah Shar’iyyah' (Shari’a-based administrative policy). For example, the differences of opinion among the jurists (fuqaha) in various chapters of Fiqh; in this case, every Muslim will worship or act according to whichever of the acceptable opinions they consider correct. As long as there is room for 'ijtihad' and review on any matter, there will be no interference from administrative policy in imposing a single opinion or forcing people to accept it.

Included in this are financial transactions and the general activities of people’s daily lives where there is no risk of harm; therefore, the fundamental rule is that there will be no interference in these from the side of Siyasah Shar’iyyah.

However, in the present age, certain new issues have emerged that have expanded the scope of intervention of Siyasah Shari'ah in these fields. This is contemporary legislation (Taqnin), which has incorporated many of the finer details of these provisions into state law so that they may serve as the basis for judicial rulings. Consequently, these have become administratively mandatory.

Similarly, contemporary administrative policies have established detailed procedures for many aspects of life, including transactions. Because they are related to public interest, they are now included within the subject of Siyasah Shari'ah.

In the chapter on administrative matters or Siyasah, the ruler's action in choosing a jurisprudential (Fiqhi) opinion depends on two conditions:

First Condition: When the ruler selects an opinion based on public interest, for the purpose of preventing harm, or for any other similar reason; this is clearly included in Siyasah Shari'ah.

Second Condition: When the ruler selects an opinion because it is more robust in terms of evidence; in the context of being included in Siyasah Shari'ah, the ruling on this matter will be the same as that for definitive (Qat'i) matters; meaning, it is not part of Siyasah or administrative policy.

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...Shari'i, because it is associated with the review of the original text or Nass. However, this is contrary to those doctrines that believe politics includes everything described by the Nass as well as everything outside of it.

5. Fatwas on State or Administrative Matters:

Epistemological research and fatwas related to public interest are fundamentally not part of Shari'i politics (Siyasah Shari'ah). They influence Shari'i politics in the sense that they form the foundation through which Shari'i politics is understood, and rulers rely on them in their judicial decisions. However, in terms of obligation, they are not included in the rulings of Shari'i politics until a state decree or order is issued.

The method of presenting Shari'i politics by most contemporary scholars is that it relates only to

the ruler. For they explicitly mention that Shari'i politics is an action associated with the ruler or the management of state affairs. They do not associate the actions of anyone other than the ruler with it.

Many among them have emphasized that Shari'i politics is related to the ruler or their deputy. This does not include the Mufti, because their statements are not mandatory. Their role is limited to providing guidance and descriptions until the ruler accepts them (1).

However, a different perspective exists among some contemporary researchers who believe that Shari'i politics is not limited only to matters issued by the ruler. They consider Shari'i politics to be included within this scope (2).

In this instance, the disagreement is terminological. Nevertheless, these fatwas and research studies will maintain their clear influence in the field of politics, whether they are referred to by that name or not.

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(1) See: Al-Siyasah al-Shar’iyyah fil-Ahwal al-Shakhsiyyah 25; Al-Siyasah al-Shar’iyyah wa Atharuha fil-Hukm al-Taklifi 47 and 74-75; Az-Zawaj bit-ul-Ijtihadiyyah fis-Siyasah al-Shar’iyyah, Abdul Karim al-Ani 78.
(2) See: Adwa'u ‘alas-Siyasah al-Shar’iyyah 29; Mudhakkarat al-Siyasah al-Shar’iyyah, Abdullah an-Nasir 9; al-Madkhal ilas-Siyasah al-Shar’iyyah wal-Anzimat al-Mar'iyyah 32.

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6. Special Authorities:

Such as guardianship over minors, the legally incompetent, and the insane; the authority of a husband over his wife; and paternal guardianship in matters of marriage.

This type of authority is not included in the contemporary concept of ‘Sharia Politics’ (Siyasah Shar’iyyah), as it does not pertain to public interest or general affairs.

However, the characteristic of Sharia Politics that exerts influence over legal rulings—which will be discussed later—is also present within these. This is because Sharia Politics takes on a distinct form through its mandatory nature, which influences rulings; and this characteristic is also found in those special authorities, although to a relatively lesser degree and on a smaller scale. A detailed description of this will be provided in the fourth introduction.

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Fourth Introduction

Perspectives and Influential Characteristics of Siyasah Shar’iyyah

What requires the most emphasis regarding Siyasah Shar’iyyah is to look at its influential characteristics. In the present age, what factor has given Siyasah Shar’iyyah such importance and special significance?

The answer to this question establishes the correct perspective on Siyasah Shar’iyyah and reveals its influential importance. Therefore, it would not be appropriate for us to be immersed in the hair-splitting analysis of ancient and modern definitions instead of observing this matter.

We can say that the contemporary perspective on Siyasah Shar’iyyah can essentially be summarized into four fundamental points:

1- Technique of Review: This refers to the Imam or ruler's practical application of reality for the purpose of deriving appropriate Sharia rulings that ensure public welfare...

...associated with the methodology of review.

This is because he considers **Siyasa Shar'iyyah** as a form of welfare-oriented **ijtihad** (legal reasoning) concerning matters of public interest where there is no direct textual script (**nass**) or evidence, enabling the attainment of Sharia-based **ijtihad** that ensures Sharia-compliant public welfare.

2- Independent Science: This involves viewing **Siyasa Shar'iyyah** as an independent discipline, wherein the well-known principles of a field of study emerge:

Indeed, there are ten principles for every discipline:
Definition, subject matter, and result;
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And its status, relationship, and founder;
Name, source, and the ruling of the Lawgiver;
Core issues (**masail**); some remain satisfied with partial knowledge, while he who masters them all earns complete honor.

Therefore, he attempts to provide a comprehensive Sharia-based solution for a significant epistemological domain, surrounding which many doubts have been raised regarding the rulings of Islam.

3- The Islamic Political System: This is similar to the second perspective, but it characterizes political science through its most vital chapter: the political system that governs the internal affairs of the state. Through this, he aims to highlight the characteristics of this political system, the actual

nature of the influential powers within it, and the scope of their functions.

4- Achieving Public Welfare (Al-Istislah Al-Am): The objective here is to attain public welfare in general, whether in general or specific matters. Thus, by '**Siyasa Shar'iyyah**', he refers to the methodology employed to reach a desired objective, whether for educational, social, political, or other purposes (1).

These are various perspectives on the concept of **Siyasa Shar'iyyah**. It is possible for multiple viewpoints to converge in the thought of a particular individual. Rather, the goal is to underscore the importance of distinguishing between these meanings: is **Siyasa Shar'iyyah** a theoretical strategy, a science that consolidates disparate issues, a system with distinct characteristics, or an endeavor to achieve public welfare?

(1) Some contemporary researchers have noted the distinction between the political perspective as a tool for providing evidence based on **maslahah** (public interest) in general political rulings, and the political actions issued by rulers. See: '**Al-Maslahatul Ammah min Manzurin Islami**', Fawzi Khalil, pp. 111-115. Among those who use the term '**Siyasah**' in the sense of **maslahah** or welfare is Ibn Uthaymeen; see: **Ash-Sharhul Mumti**, 13/29 and 14/28.

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The true characteristic of Al-Siyasah al-Shar'iyyah is that, in primary judgment, it is an analytical technique, a reliable ijtihad, and a welfare-oriented and influential application in the context of rulings.

Based on this, when politics becomes a discipline related to all internal and foreign matters, it

takes the form of an epistemological field that brings together the issues related to this chapter, and it has manifold benefits. However, the terminology itself does not carry any independent characteristics; as a result, there remains no difference between Al-Siyasah al-Shar'iyyah and the sciences of worship (Ibadah) or transactions (Muamalat). Because it is merely a collection of various rulings gathered from different chapters.

Similarly, it also eliminates the importance of writing on any specific subject of Al-Siyasah al-Shar'iyyah. Therefore, if shura, bay'at, war, or elections are spoken of under Al-Siyasah al-Shar'iyyah, these concepts will not have an independent identity of Al-Siyasah al-Shar'iyyah until they come for review; because politics has then merely turned into an epistemological field.

For this reason, the discussions on Al-Siyasah al-Shar'iyyah confirm this very point: that it is a reliable ijtihad and an analytical technique; it is not merely an epistemological field or a specific system. Included within this are:

1- The evidences for the validity of Al-Siyasah al-Shar'iyyah—which will follow—prove that it is an ijtihad and an influential method in the case of rulings. The evidences confirm that Al-Siyasah al-Shar'iyyah is a Sharia matter; and its meaning is that we are facing a reliable and valid ijtihad here, not a theoretical science or a mere epistemological field.

2- Alongside this, the evidences of Al-Siyasah al-Shar'iyyah within the Seerah (biography) of the Prophet (peace be upon him) and the Rightly Guided Caliphs reinforce this meaning. No independent issues related to politics were mentioned there; rather, such events were mentioned that provide us with guidance for ijtihad in matters of public welfare.

It is extremely important to keep this matter in mind during the study of Al-Siyasah al-Shar'iyyah so that attention remains focused on it. Because the subjects included in Al-Siyasah al-Shar'iyyah are very extensive, as a result of which there is a risk of the reader becoming distracted. On the other hand, if they understand the matter and shed light on the aspects that influence the ruling...

Sharia-based politics; he has realized the true form of Sharia-based politics and that it is a public welfare ijtihad (research) in matters concerning public interest. Therefore, he has been careful about every matter that influences this perspective; because this is the unique characteristic of this politics. As a result, he does not engage in anything that weakens its influence...

...makes it so.

We will discuss this fundamental role and all the matters in the remaining research of this book that are inextricably linked with the influence of this acceptable ijtihad. This does not mean that other legal issues (mas'ala) will not be discussed; rather, the objective is for the reader to remain aware of the position of every issue on the map of Sharia-based politics.

Once it is well-established that Sharia-based politics is an acceptable, welfare-oriented ijtihad and an investigative process concerning legal provisions, and when we observe this process closely, we find that it is influenced by two central factors that transform it into an influential perspective regarding Sharia rulings:

First Factor: Obligation (Ilzam). Politics is essentially related to the ruler's actions regarding matters of public interest. This ruler possesses the power to impose obligations on people. This obligation will affect the rulings, resulting in some provisions transforming from permissibility (ibahat) to prohibition (haram) or obligation (wajib), or a communal obligation (fard al-kifaya) becoming an individual obligation (fard al-'ayn) for some individuals, and so on (1).

This is one of the most influential characteristics of this political Sharia-based ijtihad, which grants

it a distinct status from all else.

And when you keep this characteristic in mind, we will be able to realize that special guardianships (such as guardianship over a minor and similar matters) carry the same meaning here, although to a slightly lesser degree. A minor's guardian has the authority to impose obligations upon them. Therefore, whether we include these special guardianships within Sharia-based politics or keep them outside, the real issue is that the key feature influencing the concept of Sharia-based politics based on acceptable ijtihad is present within it.

(1) To learn about the impact of Sharia-based politics on the five legal categories (taklifi rulings), see: As-Siyasa al-Shar'iyya wa Atharuha fil Hukm al-Shar'i al-Taklifi, Chapter Two, pages 343-519.

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Second Factor: Variable factors affecting the rulings; these are variable matters such as necessity, need, public interest, or capacity that may impact Sharia rulings. Alternatively, the basis of a ruling may change depending on time and context, which, according to acceptable Sharia principles, makes it necessary to perform ijtihad with these variable factors in mind.

This variability is much higher in matters concerning general public interest, which, according to Sharia principles, makes a maslaha-based (public interest) approach mandatory, aimed at ensuring public welfare and averting harm. The second influential feature in the case of Siyasa al-Shar'iyya is that it will conduct ijtihad in light of changing realities according to acceptable principles, and this ijtihad will have an impact on the legal rulings.

And once we can grasp the influence of this characteristic, it will affect the selection of the scope

of Siyasa al-Shar'iyya concerning matters where contemporaries have differed in opinion.

Then we will be able to understand that this characteristic is present in the fatwas of contemporary scholars and the research of jurists. This is because they work with this dynamic aspect and express rulings therein. Therefore, whether they are included under Siyasa Shari'yyah or not, it will not change the reality that they possess the same influential characteristic that remains active in the case of Siyasa Shari'yyah.

And when we understand that the influential characteristic applies to changing matters, then those aspects of divine revelation (wahy) that are definitive do not leave room for this type of ijtihad (independent legal reasoning). Therefore, they do not possess such an influential characteristic that can be included in the concept of Siyasa Shari'yyah; even if they were included, it would have no meaning.

Summary of this introduction:

In the review of Siyasa Shari'yyah, importance should be given to its influential aspect, which distinguishes it from everything else. And this aspect is considering it as a public welfare-oriented ijtihad that serves human welfare and is an acceptable method of observation regarding the words of revelation. It is upon this that we present evidence and establish proofs from the actions of the Prophet (peace be upon him), his Caliphs, and subsequently the jurists of Islam.

This reliable ijtihad, the impact of which depends on two fundamental characteristics: first, the

characteristic of obligation, which grants a ruler or administrator such specific authority that influences certain rules and regulations. Second, the **characteristic of change based on reliable ijtihad**.

Based on the subtle review we consider extremely important in the chapter on Siyasa Shari'yyah (Sharia-based politics), this chapter should be restricted only to matters related to the said influence, so that a correct understanding of Siyasa Shari'yyah is achieved. The fact that a matter is related to the judiciary, general politics, or international politics does not necessarily mean it is inextricably linked with Siyasa Shari'yyah. These issues may be discussed under the judicial system, political system, international relations, or constitutional law; or they may be included in contexts such as Shura (consultation), Bay'ah (oath of allegiance), and Khilafah (caliphate), etc. However, if they are practical aspects of Siyasa Shari'yyah, it is a different matter. If they involve any ijtihad related to public interest, then it is an important practical element for Siyasa Shari'yyah.

Furthermore, the discussion of Siyasa Shari'yyah should be limited to matters that are associated with this reliable ijtihad or exert influence upon it. This is because the issue of obligation or compliance is related to the ruler, which makes the discussion of the concept of a ruler, the limits of obligation, and other such matters—which reveal this characteristic—indispensable.

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Fifth Introduction

The Relationship Between Public-Interest-Oriented Ijtihad and Sharia Texts (Nusus)

Siyasah Shar'iyyah (Sharia-based governance) strives to manage public affairs by promoting public welfare and preventing harm. To achieve this noble objective, it is a method of Ijtihad within the framework of Sharia.

This necessitates a review of the relationship between public-interest-oriented Ijtihad and Sharia texts (evidence). What is the extent of a public-interest-oriented perspective that maintains a balance between considering public welfare and adhering to the boundaries of Sharia?

Siyasah Shar'iyyah is fundamentally built upon the balance of two pillars: paying attention to public welfare and remaining faithful to the boundaries of Sharia. If there is any deficiency in fulfilling either of these two pillars, it will be detrimental to the second pillar and will even render that specific pillar itself defective.

Therefore, a person who fails to observe the boundaries of Sharia while considering public welfare is fundamentally deficient in their consideration of public welfare. This is because, in such circumstances, that welfare will not be regarded as an acceptable Sharia-compliant welfare, even if the person involved perceives it to be a benefit.

Likewise, a person who goes to extremes regarding a text or evidence in a way that leads them to fail in performing acceptable public-interest-oriented Ijtihad is fundamentally deficient in the consideration of the text itself. This is because they have rendered an acceptable welfare ineffective based on the misconception that it contradicts the text; consequently, they have also failed to properly understand the text itself.

This ensures the precision of Ijtihad in the context of Siyasah Shar'iyyah. The person qualified for Ijtihad in this regard is one who combines the competence for Ijtihad in Sharia rulings with the competence of deep knowledge concerning changing welfare and harm. Since we have concluded that 'Siyasah' is an Ijtihadi intellect and an evaluative process in managing public interest that ensures public welfare not contrary to Sharia, this intellect is not acquired merely

through the study of...

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...the issues of any specific chapter or by emphasizing the study of any specific field of research; rather, it relates to the competence of perspective. It is not a matter of special focus on any specific chapter or issue.

Boundaries of Public-Interest-Oriented Political Ijtihad:

Therefore, the scope of public-interest-oriented Ijtihad relates to those matters in which there is no specific text (evidence). This scope encompasses four fundamental areas:

First area: Legality (Ibahat).
Second area: Matters where a text exists that is linked to a custom or changing public welfare.

Third area: A text (nass) that conflicts with other Sharia principles and regulations.
Fourth area: A text with potential meanings.

Detailed description of these areas:

First area: Permissibility (Ibahat).

One aspect of the breadth of Sharia is that whatever has not been addressed by a text (nass) or evidence (dalil) regarding its prohibition is considered permissible. For instance, Allah the Almighty said: "While He has explained in detail to you what He has forbidden you, excepting that to which you are compelled." [Al-An'am: 119]. Therefore, any action or public welfare matter that Sharia has not forbidden falls within the scope of permissibility. This is because the Lawgiver

(Allah) has detailed the forbidden matters. Thus, this scope of permissibility is related to the majority of life's activities. Most laws and systems regulating human affairs fall under this category; consequently, public-interest-oriented ijtihad in these areas is not contrary to Sharia.

Within the scope of permissibility, we can include three types of rulings:

First type:

All words and deeds related to the public interest that are included in general permissibility and for which there is no specific text (nass). This is that vast domain for which no text has been revealed regarding its prohibition.

Second type:

The arrival of a ruling that provides a person with a choice among several matters. This choice or option (ikhtiyar) is of two kinds:

First: The personal choice of the accountable (mukallaf) person, such as granting a choice in the case of expiations (kaffarah); for example, the expiation for an oath: "its expiation is feeding ten needy people from the average of what you feed your families or clothing them or the freeing of a slave" [Al-Ma'idah: 89], and the expiation for hardship (i.e., if a prohibited act is committed) during Hajj. In this category, the accountable person chooses according to their will, and it has no connection to Sharia-based policy (Siyasah Shar'iyyah).

Second: A choice related to the one who holds authority or governance (wilayah). This choice is valid for the person in authority, but it is necessary for them to choose the more beneficial option among them. Therefore, this is a maslahah (public interest) or a public-welfare-oriented political ijtihad within the scope of permissibility.

A few examples of this type are:

- The opportunity to choose from several matters regarding the ruling on male prisoners of war: such as execution, granting freedom as a favor,

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Taking ransom and enslaving. (1)

- Regarding the punishment of a **Muharib** (terrorist or bandit), there is an option to choose from the four matters mentioned in the word of Allah Almighty: "Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land." [Al-Ma'idah: 33]; In this regard, the Imam or ruler has the discretion to determine the most suitable punishment among these four based on public welfare. (2)

(1) See: **Ash-Sharh al-Kabir** by ad-Dardir 2/184; **Rawdat at-Talibin** 10/251; **al-Iqna** by al-Hijjawi 2/15. According to the Hanafi school, there is an option to choose between execution, Jizya, and slavery; see: **al-Bahr ar-Ra'iq** 5/98; and this applies to male prisoners of war.
(2) This is according to the Maliki school; see: **Sharh Mukhtasar Khalil** by al-Kharshi 8/105; **Ash-Sharh al-Kabir** by ad-Dardir 4/349. According to the **Jumhur** (majority) of jurists, the Imam does not have such discretion to choose among the matters mentioned in the verse; see: **al-Bahr ar-Ra'iq** 5/73; **Rawdat at-Talibin** 10/156; **al-Iqna** by al-Hijjawi 4/287.

...and included in this is the Imam's discretion regarding forcibly conquered lands, which he can choose to either distribute or designate as **Waqf** (endowment) (1).

Third category: Those Shari'ah matters that have been entrusted to the ruler; these are Shari'ah-compliant matters, and the ruler has the discretion to make decisions based on public interest.

Examples of this are:
- The validity of concluding a ceasefire and peace treaty.
- And determining the amount of **Ta'zir** (discretionary punishment) for those crimes for which no fixed penalty is prescribed.

Because this is a Shari'ah-compliant matter, and its determination depends on reliable political **Ijtihad**.

Second field: Matters regarding which a **Nass** (scriptural text) has been revealed that is related to a custom (**Urf**) or a changing public interest.

And it is such that the **Nass** or Shari'ah ruling was related to a custom or public interest, which subsequently changed; consequently, as long as its cause (**'Illah**) remains changed, the ruling will also change. Here, the role of reliable political **Ijtihad** comes in so that such meanings can be taken into consideration.

There are some well-known examples in this regard which we will mention, and later we will discuss the principles related to this. Some examples of changes in rulings due to changes in custom or public interest are (2):

1. Al-Aqila:

Since during the era of the Prophet (peace be upon him), the 'Aqila' (those responsible for blood money) were the individual's close relatives; there was no involvement of the 'Ahl al-Diwan' (personnel listed in the state register). Rather, they were considered like others in this regard. This was adopted based on the circumstances of the Prophet's (peace be upon him) era (3).

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(1) This is the opinion of the Hanafi and Hanbali schools. See: Al-Bahr al-Ra'iq 5/89; Al-Iqna, Hijjawi 2/31.
(2) I want to caution here that the purpose of the examples in this chapter is to clarify the core principle and describe how the jurists applied it; detailed analysis of every example, presenting evidence, or answering objections is not the purpose here.
(3) This is the opinion of the Shafi'i and Hanbali schools. See: Al-Sharh al-Kabir, Ibn Abi Umar 9/646; Rawdat al-Talibin 9/349.

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Some jurists have held the opinion that it should start first with the individuals included in the Diwan (state register), and then the close agnate relatives (Asaba).

They have presented evidence for this through the actions of Umar (may Allah be pleased with him); because he had fixed the blood money (diyat) upon the individuals listed in the Diwan. (This was not a change in the Shariah ruling on his part, but rather it was an assurance of the ruling. This is because he knew that his tribesmen used to undertake the responsibility of assistance.

However, when mutual cooperation began to be based on military units (banners), he then placed the responsibility of blood money upon them; he did not even make it obligatory upon women and children, because mutual cooperation is not achieved through them).

According to the second opinion, the purpose of 'Aqilah' (blood money payers) is mutual cooperation. Since in the era of the Prophet (peace be upon him) this cooperation was established on the basis of kinship ties, the ruling was linked to it. When this custom ('Urf) changed and cooperation became associated with the individuals in the Diwan, the ruling also shifted accordingly. Therefore, this is an example of how a ruling changes due to the change in the custom that serves as its basis.

2. Consideration of measurement (kayl) and weight in matters containing specific textual evidence:

Since the matter of measurement and weight has been determined by the Prophet (peace be upon him) for several ribawi (interest-related) goods; in such a situation, is it permissible to sell homogeneous ribawi goods in exchange for one another (such as dates for dates), if their equality can be ensured in any way other than the Shariah-prescribed standard, i.e., measurement?

Qazi Abu Yusuf held the opinion that the basis for this consideration was the custom of that time. Therefore, if equality can be ensured through weight or measurement, it will be permissible. However, the four schools of thought have opposed him on this matter. They have rejected the consideration of custom, either to give priority to the explicit text (nass) of Shariah or because the matter of interest (riba) is 'ta'abbudi' (a matter of worship beyond rationalization).

(1) This is the opinion of the Hanafi and Maliki schools, see: Al-Sharh al-Kabir, Ad-Dardir, 4/348; Hashiya Ibn Abidin, 6/641.
(2) Hashiya Ibn Abidin, 6/641; regarding the action of Umar (may Allah be pleased with him), see: Musannaf Ibn Abi Shaybah (27325).

(3) See: Fath al-Qadir, Ibn al-Humam, 7/151.

(4) See: Fath al-Qadir, Ibn al-Humam, 7/15; Ar-Rawdul Murbi, 341; Nihayatul Muhtaj, 4/195; Sharh Mukhtasar Khalil, Al-Kharshi, 5/67.

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Page 58 3- Taking Lost Camels:

Some jurists have considered it permissible to take lost camels for the purpose of identification (ta'lan). They explained this in relation to conventional views, stating that in that era, honest and righteous people were prevalent; if the person who found the animal left it there, it would not fall into the hands of a misappropriator. However, in our age, the finder might not feel safe, fearing that after they leave, it might fall into the hands of a dishonest person. Therefore, picking it up is intended to keep it alive and preserve it for the owner, which is better than letting it perish.(1)

4- Not Fixing Prices:

It is narrated from Anas (may Allah be pleased with him) that he said: Once during the time of the Messenger of Allah (peace and blessings of Allah be upon him), the prices of goods increased. Then the Companions said: O Messenger of Allah, fix the prices for us. He said: (Verily, Allah is the One Who sets prices, He is the Withholder, the Expander, and the Provider. I hope to meet my Lord in a state where none of you has a claim against me for injustice regarding blood or property).(2)

This Hadith provides evidence for the prohibition of price-fixing, as the Prophet (peace and blessings of Allah be upon him) refrained from it and mentioned "injustice" in the Hadith, which proves that fixing prices is an act of oppression or injustice.

For this reason, the majority (Jumhur) of jurists have expressed their opinion against price-fixing.(3) However, some in the Maliki school—and there is also a narration from Imam Malik—have expressed the view that price-fixing is permissible to protect the public interest. For example, the Hanafi school also held the opinion that it is permissible when the necessity to remove public harm arises.(4)

(1) Al-Mabsut 11/111.

(2) This has been narrated by Abu Dawood (3451), Tirmidhi (1314), Ahmad in his Musnad (11809), and Ibn Majah (2200). Imam Tirmidhi said: Hasan Sahih.

(3) The Shafi'i and Hanbali schools have expressed the view that it is forbidden (Haram), and the Hanafis have expressed the view that it is disliked (Makruh)—as long as the matter of preventing public harm is not involved; just as Imam Malik forbade it. See: Nihayatul Muhtaj 3/473, Kifayatun Nabih 9/283, Al-Insaf 4/338, Ghayatul Muntaha 1/517, Al-Hidayah 4/477-478, Majma'ul Anhur 2/554, Hashiyat Ibn Abidin 6/399, Al-Muntaqa Sharh al-Muwatta 5/18; Ibn Rushd has mentioned a consensus on the prohibition of price-fixing for suppliers in the market. See: Al-Bayan wa at-Tahsil 9/268.

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(8) See: Al-Bayan wa al-Tahsil 9/314 and 368, At-Taj wa al-Iklil 6/254, Al-Muntaqa Sharh al-Muwatta 5/18. For the opinions of the Hanafi school of thought, refer to the sources cited in the preceding footnote.

This is the opinion of Shaykh al-Islam Ibn Taymiyyah. He concluded that: (When the needs of the people cannot be met without the determination of a fair price, then a fair price must be set for them, in a manner that entails neither deficiency nor unjust excess)**(1)**.

Moreover, this ijtihad (legal reasoning) does not contradict the primary evidence. The Prophet (peace and blessings of Allah be upon him) refrained from price-fixing because there was no necessity for it, and thus no public interest was served by it at that time. However, when such public interest is present, the ruling changes due to the change in the underlying interest.

Ibn al-Arabi stated: (Based on the literal meaning of the Hadith, all other scholars have maintained that prices cannot be fixed for anyone. However, the truth is that fixing prices and regulating the matter under such a rule is necessary to ensure that neither party is oppressed. This rule can only be properly determined through a comprehensive review of the timing, the specifics of the situation, and the condition of the people. Allah is the Granter of success to the right path. What the Prophet (peace and blessings of Allah be upon him) stated is true and constituted a legal ruling; however, that was addressed to a people whose resolve was firm and who were submissive to their Lord. Conversely, for those who intend to exploit people and narrow their lives, Allah's latitude is broader and His ruling is more effective)**(2)**.

5. Performing the Zuhr Prayer in Cooler Temperatures (by Delaying it):

The Sunnah of delaying the Zuhr prayer to perform it in cooler temperatures is narrated from the Prophet (peace and blessings of Allah be upon him) through both his words and actions, intended to allow the intensity of the heat to subside. He said: (When the heat is intense, perform the prayer when it is cool; for the intensity of the heat originates from the breath of Hell)**(3)**.

The underlying wisdom or secret is to prioritize the relief of hardship and difficulty for people, enabling them to maintain concentration in their prayer. Nonetheless, the jurists have divergent opinions regarding the scope of application of this ruling, while keeping this intended objective in

mind.

(1) Majmu' al-Fatawa 28/105, At-Turuq al-Hukmiyyah 2/683.

(2) Aridat al-Ahwadhi 6/54.

(3) This is narrated from the Hadith of Abu Hurayrah (may Allah be pleased with him) in Bukhari (533) and Muslim (615). Additionally, it is cited from Hadiths narrated by Abu Dharr, Ibn Umar, and Abu Sa'id al-Khudri (may Allah be pleased with them all) in the Sahihayn (Bukhari and Muslim).

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It has been said: This pertains to the extreme heat of summer, not winter. In this case, praying in a congregation or the region being hot is not a condition. (1)

Again, it has been said: This is related to the congregation; because its purpose is to provide convenience or ease. This is achieved in the case of a congregation, not for an individual. It includes both summer and winter seasons, although summer is more apparent. (2)

It has also been said: It pertains to hot regions and to those mosques where people come from afar for the purpose of the congregation. (3)

Furthermore, it has been said: It is general; without any detailed analysis, it is Sunnah to perform 'Ibrad' (delaying the Zuhr prayer slightly during intense heat) in every instance of extreme heat. (4)

Therefore, it can be said that: the ruling of Ibrad has changed because its 'maslahat' (benefit) has changed. Consequently, a distinction has been made between the congregation and the

individual, between the heat of summer and winter, and between hot and cold regions. In such circumstances, its status will be like the previous examples.

However, the stronger opinion is—this ruling is not like that. It is not a ruling of Ibrad which, once established at a certain time, subsequently changed due to a change in its foundation; rather, differences of opinion have arisen among the scholars in understanding the Hadith and describing its essence. Therefore, the debate lies in determining the circumstances where Ibrad would be Sharia-compliant.

For this reason, Ibn Rajab (RA) says: "Regarding the reason why the command for Ibrad was given, they (the scholars) have differed. Some among them have said: its purpose is to attain concentration (khushu) in prayer. Because praying in intense heat is like the prayer of a person before whom food is presented that their soul craves, or like the prayer of a person who is suppressing the urge to relieve themselves. Because at that moment, the human mind is anxious for midday rest and comfort. According to this view, there is no difference between one who performs the prayer alone and one who performs it in a congregation. Again, some among them have said: the reason is to avoid the hardship of those coming to the mosque from a distance on foot in intense heat; and according to this view, it is specific to them..."

(1) This is the opinion of the Hanafi Madhhab; see: Al-Bahr al-Ra'iq 1/260, Al-Binayah Sharh al-Hidayah 2/40.
(2) This is the opinion of the Maliki Madhhab; see: Al-Bayan wa al-Tahsil 18/170, Sharh Mukhtasar Khalil lil-Khirashi 1/216.
(3) This is the opinion of the Shafi'i Madhhab; see: Al-Umm 1/91, Nihayat al-Muhtaj 1/433.
(4) This is the opinion of the Hanbali Madhhab; see: Sharh Muntaha al-Iradat 1/141.

Performing 'Ibrad' (delaying the Zuhr prayer slightly during intense heat) for worshippers coming from distant places to join the congregational prayer. Some of them have said: This is the time when Hell exhales (1).

A contemporary issue is clearer as an example of associating a ruling (Hukm) with changing interests or public welfare (Maslahah). This concerns the impact of modern air conditioning systems on changing the ruling of Ibrad. If mosques are air-conditioned and people do not experience hardship in performing Ibrad during intense heat, will it be said that Ibrad remains as a Sunnah? Or is this ruling no longer in effect because of the change in interest and the disappearance of the Hikmah (rational reason)?

Contemporary scholars are divided into two opinions on this matter:

First Opinion: They hold the view that a ruling revolves around its cause ('Illah). Therefore, when these modern facilities are present, there is no longer a need for Ibrad, because the intended interest is no longer served by it (2).

Second Opinion: Other scholars have opined in favor of this ruling remaining in effect for two reasons:

First Reason: This ruling is part of the Sunnah, so it cannot be allowed to lapse; especially since it is mentioned in the Hadith that the reason for this ruling is that intense heat is a breath from the heat of Hell.

Second Reason: These modern facilities may not be easily available to everyone; moreover,

intense heat still exists on the way to the mosque (3).

The influence of custom ('Urf) and public interest (Maslahah) on changing rulings:

These are examples of certain Shariah evidences and rulings that have been influenced by changes in custom and public interest. It is a consensus matter that within Shariah rulings, there is a specific field which...

(1) Fath al-Bari, Ibn Rajab 4/241.
(2) See: Sharh 'Umdat al-Ahkam, Ibn Jibreen 8/10 (according to the Shamela edition).
(3) See: Ibrad in Zuhr prayer during intense heat, Ahmad al-Mazna 132, Ulum al-Shar'iyyah wa al-Arabiyyah Journal, Imam Muhammad ibn Saud Islamic University, issue 3, and Ibn Baz website: https://cutt.us/ttequ

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Changes can occur in them due to changes in time and place. However, differences of opinion have been observed in two methods regarding the naming and explanation of this matter:

First Method: Those who deny the existence of this change within the rulings (Ahkam). Rather, in their view, what happens is that the basis (Manat) of the ruling changes, and as a result, the ruling itself changes. Therefore, the new form of the ruling is not an exact replica of the old form. Rather, when that basis was present in the first case, the ruling was associated with it. When

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When the basis changed, the ruling also changed. For example, according to those who consider

price fixing (tas'ir) permissible, it is not that what was previously forbidden has later become permissible (mubah). Rather, it is related to necessity. The Prophet (PBUH) avoided it because there was no need for it at that time. Therefore, when a need arises, the basis of the ruling changes; consequently, it no longer remains that old ruling.

Their argument is that the situation for which the change in ruling is mentioned is not identical in all its characteristics to the previous situation; instead, a difference has arisen there. Therefore, it cannot be said that the ruling has changed, because the situation is not the same. Rather, what has changed is the basis (manat) upon which the ruling was dependent. For example, differences in customs regarding the condition of 'muruwwah' (decency or personality) in testimony, the method of handing over sold goods, explicit and metaphorical terms in words of divorce, the amount of maintenance, determining the limit of defects in buying and selling, etc. The rotation of rulings based on these foundations is not a change in the core essence of the ruling (1).

Second Method: Those who establish the change of rulings. This is because the objective here is the change of the ruling in conjunction with subordinate matters, associations, causes, and reasons. This is what we call changeable, whether it is called a fatwa or 'tahqiq al-manat' (verification of the basis). Therefore, if any ruling described in the Sunnah was given based on people's conditions and behavior, and subsequently those conditions change, then it is necessary for the ruling to change accordingly, in consistency with the Lawgiver's objective of protecting the public interest (2).

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(1) See: Dawabit al-Maslahah 247, al-Thabat wa al-Shumul by Abid al-Sufyani 449-450.
(2) See: al-Madkhal al-Fiqhi al-'Amm 2/ 950-951, Qa'idat Taghayyur al-Ahkam al-Ijtihadiyyah by Ahmad al-Habit 293, Taghayyur al-Fatawa fil-Fiqh al-Islami by Abd al-Hakim al-Rumayli 668-679.

A famous outline of the principle of change is included in this, which is described in 'Majallat al-Ahkam al-Adliyyah' in these words: **“The change of rulings with the change of times cannot be denied”** (1).

And this difference of opinion among contemporary scholars was similarly observed among previous jurists:

Where it is customary among some jurists to use the expression of changing Sharia rulings. For example, the statement of al-Qarafi: **“A consensus-based principle is that all rulings established based on a custom (adat) change when that custom changes”** (2).

Al-Tufi said: “...and according to the demands of a mujtahid's ijtihad, Sharia rulings change depending on time and place, and they also differ due to the variations in public welfare and harm” (3).

However, some jurists have objected to the direct application of the word 'change' to rulings and have decided that change is primarily related to time. Al-Subki says: **“We do not say that the ruling changes with the change of time; rather, it happens because of the differences in newly created situations”** (4).

Hululu says: “...however, it is not correct to directly apply the word change to the ruling, although in our view its objective...”

...occurs in light of its connection (Ta’alluq)” (5).

Fundamentally, the disagreement here is terminological. For everyone agrees on the existence of this change and also agrees that this change is related to a change in the basis (Manat) of the ruling or one of its characteristics. No ruling can change without an effective causative factor. For this reason, followers of the first method refer to what followers of the second method perceive as 'change' as a 'change in the basis (Manat) of the ruling'; because here the basis of the ruling is social custom or Urf (6).

(1) See: Durar al-Hukkam Sharh Majallat al-Ahkam 1/47.

(2) Al-Furuq 4/103, and see: 1/176.

(3) Mukhtasar al-Tirmidhi 2/432, and for more on the expression of change see: Jam'ul Jawami (96).

(4) Fatawa as-Subki 2/572, and see: Al-Bahr al-Muhit, Zarkashi 1/220.

(5) At-Tawdih fi Sharh al-Tanqih, Hululu 1/275.

(6) See: Dawabit al-Maslahah 252.

For this reason, some of them prefer to express it as a 'change in Fatwa'. Because the change occurs in the Ijtihad or research applied to a specific situation, not in the original Nass (text) or the ruling itself. Caution is advisable in the choice of wording, especially when there is a risk of ambiguity or misinterpretation (1).

This is Ibn al-Qayyim’s expression regarding this principle; he stated: (Chapter: Regarding the change and variation of fatwas based on changes in time, place, circumstances, intention, and customs) (2).

In any case, change is primarily related to Ijtihad, Fatwa, or the application of rulings; it is not related to the original address or the Nass itself. Because: (a difference in rulings due to a

difference in customs is not actually a difference in the original address) (3).

Criteria for the Change of Shariah Rulings:

When the change of certain Shariah rulings is established based on a suitable reason, considering such matters in Ijtihad is not contrary to the Nass. For this reason, we have included it under matters where 'there is no Nass'; because in this situation, there is no definitive Nass concerning the disputed matter; rather, it is a valid legal issue.

The criterion for this is that it relates to rulings established based on customs and traditions. Therefore, (certainly, the rulings that change with the passage of time are those dependent on customs and traditions. Because human needs change over time, and based on this change, customs and traditions also change. As a result of changes in customs and traditions, the rulings also change, as we have explained previously. Conversely, those rulings dependent on Shariah evidences that are not built upon customs and traditions do not change) (4).

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(1) See: Qa'idat Taghayyur al-Ahkam al-Ijtihadiyyah wa Tatbiqatuh al-Mu'asirah 117.

(2) I'lam al-Muwaqqi'in 3/11.

(3) Al-Muwafaqat 2/491; and see: 2/489 and 2/491-492; also see: Nazariyyat Dawaran al-Ahkam al-Shar'iyyah, Jamila Talut 140.

(4) Durar al-Hukkam fi Sharh Majallat al-Ahkam 1/47.

And this standard must be established upon a reliable Shariah evidence which proves that the relevant ruling was based on a custom (urf) and subsequently changed. Therefore, (if a change in certain rulings or the introduction of new rulings is demanded due to differing circumstances, those introduced rulings must be such that the fundamental principles of Shariah testify in their favor, or they must at least be such that they are not considered invalid)(1).

Here, it is necessary to clearly mention that our topic of discussion is the change of rulings that were originally formulated based on some custom or public interest (maslahah), and subsequently, that custom or public interest changed. That is, the ruling was created based on a custom, and later that custom changed. This is different from the discussion regarding the influence of custom in understanding a 'Nass' (sacred text); because there, custom is of two types:

1. Verbal Custom (Urf Qawli): If the Nass or text appears in general terms, but in the contemporary custom of the Prophet (PBUH), it was used in a specific sense, then according to the understanding of the people of that era, the general term will be specified for that special meaning. For example, specifying the word 'Dabbah' (animal) for a particular four-legged beast. This falls under understanding the essence of the Nass and determining its objective, regarding which there is a consensus among the scholars.

2. Practical Custom (Urf 'Amali): This refers to any practical behavioral custom that specifies the general ruling of a Nass. Most jurists have opined against accepting this. However, according to the Hanafi school of thought, it is considered as evidence because the Prophet (PBUH) expressed tacit approval of it. But if this custom is from after the era of the Prophet (PBUH), it is not acceptable(2).

(1) Sharh al-Qawa'id al-Fiqhiyyah, Ahmad al-Zarqa, page 228. To know the areas of changing rulings according to the jurists, see the works of those who have researched this principle, such as al-Qarafi, Ibn al-Qayyim, al-Shatibi, and others. Regarding its application by contemporary researchers, see: 'Qa'idat Taghayyur al-Ahkam al-Ijtihadiyyah wa Tatbiqatuh al-Mu'asirah', pages 244-252; 'Taghayyur al-Urf wa Atharuhu fi Ikhtilaf al-Ahkam', Muhammad al-Mansi, pages 58-64;

'Al-Fatwa al-Mu'asirah', Khalid al-Muzayni, pages 359-385.

(2) See: 'Al-Bahr al-Muhit', al-Zarkashi, Vol. 3, pages 391-397; 'Sharh al-Kawakib al-Munir', Ibn al-Najjar al-Futuhi, Vol. 3, pages 385-386. See also: 'Al-Urf wa al-Adah bayna al-Shari'ah al-Islamiyyah wa al-Qanun al-Wad'i', Hasnayn Muhammad Hasnayn, page 127; 'Athar al-Urf fi al-Tashri' al-Islami', Sayyid Salih Awad, pages 348-333; 'Takhsis al-Nusus bi al-Adillat al-Ijtihadiyyah inda al-Usuliyyin', Khalifa Bakr al-Hasan, page 123; 'Al-Urf wa Atharuhu fi al-Shari'ah wa al-Qanun', Ahmad al-Siyar Mubarki, pages 145-157.

Change in Fiqhi Ijtihad:

The previous discussion primarily concerned changes in core Sharia texts when they are linked to evolving customs or public welfare. In the case of Sharia texts, the scope for such change is extremely narrow, as its instances can be precisely defined. However, if we examine Fiqhi Ijtihads (legal reasoning), the scope for change is significantly broader. In this context, change is not limited solely to the rationale of the ruling (Manat al-Hukm); it may occur due to a shift in the reasoning behind the ruling, or the Ijtihad itself may change.

Some examples of Fiqhi Ijtihad in this regard:

- Compensation for benefits derived from a seized object:

For instance, if a person who has forcefully seized an object benefits from it—such as by driving a

car, wearing clothes, or residing in a house—is it mandatory for them to pay compensation for this benefit or pay rent in exchange?

The ruling of the Hanafi school is that no compensation needs to be paid for the benefit (1), because these are not considered exchangeable or valuable assets (2).

However, later jurists of the Hanafi school have identified three types of property as exceptions to this general rule. These are: if the seized property is Waqf (endowment) property, property belonging to an orphan, or property that was intended for earning or rental (3).

This exception was made considering the issue of some people's greed regarding Waqf property...

(1) Note: Tabyin al-Haqa'iq 5/234, Al-Bahr al-Ra'iq 8/37. The majority of venerable scholars (Jumhur) have favored providing compensation for such benefits; see: Kashshaf al-Qina' 4/112, Al-Hawi al-Kabir 7/383. The Malikis distinguish between the physical possession of an object and its use; if the object itself is seized, they do not mandate compensation for benefits unless it is actually used. However, if an encroachment occurs without actual seizure of the essence, compensation is mandatory regardless of whether it was used. See: Sharh Mukhtasar Khalil by Al-Kharshi 6/131, Hashiyat al-Dasuqi 3/443, and Al-Mawsu'at al-Fiqhiyyah 25/123-124.

(2) This applies to matters outside of contracts; see: Al-Mabsut 5/71, Bada'i' al-Sana'i' 2/278.

(3) See: Al-Binayah Sharh al-Hidayah 11/251, Hashiyah Ibn Abidin 6/186.

...and to the orphans; therefore (subsequent jurists, observing human greed towards the assets of waqf and orphans, have legalized the assurance of profits from these as a form of 'Istihsan').(1)

- Legally Recognized Coercion (Ikrah):

According to Imam Abu Hanifa (R.A.), Sharia-recognized or legally significant coercion (Ikrah) is that which originates from the ruler. This is because the ruler possesses the power to enforce his commands, a power not held by others. On the other hand, Imam Abu Yusuf and Imam Muhammad ibn al-Hasan believe that coercion can be carried out by a ruler as well as by anyone else.

This difference of opinion likely refers to the actual (haqiqi) coercive power of a ruler, which is not found in others; since it is impossible to resist the ruler, whereas the situation is different regarding others. Coercion by others is rare, not long-lasting, and it is possible to seek assistance from others against it.

Furthermore, it has been stated that this difference of opinion among them is primarily due to differences in the customary (urfi) practices of their respective eras, rather than in the essence of the law (zat-ul-hukm). The reason is that during the era of Imam Abu Hanifa, the ruler was exceptionally powerful and influential; consequently, coercion rarely occurred except at his behest. However, in later times, as the influence and power of others grew, the situation changed, and with the change in circumstances, the fatwa (legal ruling) also changed. Therefore, they (the Sahibayn) stated that coercion can occur through individuals other than the ruler.(2)

- Accepting Apparent Probity (Adalat):

Imam Abu Hanifa (R.A.) deems it appropriate to decide based on the apparent probity (uprightness) of witnesses in cases other than Hudud and Qisas, provided the defendant raises no objection regarding the witness. In such instances, there is no need to investigate the witness.

However, his two disciples (the Sahibayn) have opposed him on this matter; they assert that an investigation regarding the witness is mandatory. They have also differed on the nature of this disagreement. It has been said: the difference here is due to the passage of time and is not a fundamental legal disagreement. This is because Imam Abu Hanifa's ruling was based on the social norms of his contemporary era, when probity and trustworthiness were generally prevalent among the people,

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(1) Durar al-Hukkam Sharh Majallat al-Ahkam 1/686 and 1/48.

(2) See: Bada'i al-Sana'i 7/167, al-Mabsut 9/59, al-Hidayah 3/272, al-'Inayah Sharh al-Hidayah 5/273; and here, al-Jassas has provided another explanation for Imam Abu Hanifa's position which is not related to changes in custom or 'urf; see: Ahkam al-Qur'an 3/337.

Therefore, instead of answering the question, I have limited myself to this visible correction (1).

- Rulings on marriage, divorce, and oaths based on social custom or tradition ('Urf):

The reason for this is that jurists (fuqaha) often determine rulings in these chapters based on their contemporary customs, and these are not permanent Shari'ah laws. For this reason, those who rely on them without being aware of this fact make mistakes. Imam al-Qarafi has drawn attention to the importance of following the principle of 'Urf or custom and has severely criticized those who show laxity in this matter, saying:

(This is a principle that is essential to keep in mind. And if you understand this fully, the mistakes

of many jurists who issue fatwas will become clear to you. They apply what is recorded in the books of their Imams to people of all regions across all ages. However, this is contrary to the consensus (Ijma). They are disobedient and sinful before Almighty Allah, and they will find no excuse for their ignorance; because they have engaged in the work of issuing fatwas without being qualified to do so and without being aware of the changes in the sources, conditions, and circumstances of fatwas) (2).

He reiterated the importance of being careful about this matter, saying: (And according to this rule, caution will be exercised in the matter of fatwas throughout the ages. Therefore, consider whatever innovations occur in customs, and abandon what becomes obsolete. Do not rely solely on what is written in books for your entire life. Rather, when someone from outside your region comes to ask you for a fatwa, do not guide them based on the customs of your region. Ask them about the customs of their region and issue fatwas accordingly; not according to the customs of your region or what is prescribed in your books. This is the clear truth. And remaining stagnant forever on matters described in books is a deviation in religion and ignorance of the intentions of Muslim scholars and the predecessors (Salaf)) (3).

He has provided some examples for this, which include:

- The occurrence of three divorces upon a person who says to his wife "You are free" or "You are unrelated," in the context of what has been described in Imam Malik's book...

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(1) See: Sharh Mukhtasar at-Tahawi 8/32, Bada'i' as-Sana'i' 6/270, Sharh Adab al-Qadi 1/227-229.

(2) See: Al-Furuq 1/141.

(3) See: Al-Furuq 1/363-387.

That was a fatwa based on his contemporary customs, whereas those customs have now become obsolete. As a result, today we do not see anyone giving divorce through the words 'Khaliyah' or 'Bariyyah'.(1)

— If a husband and wife disagree about the receipt of the dower (Mahr), then the statement or decision will differ according to custom. Consequently

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According to the prevailing customs of their country, sometimes the husband's word, and at other times the wife's word, may be acceptable. (2)

Therefore, the matter of changes in rulings due to changes in public interest or custom exists within the original texts (nass) of Sharia and the ijtihad (legal reasoning) of the jurists.

However, in the case of nass and Sharia rulings, the matter is distinct by two characteristics:

1. Such examples are very negligible and are related to a limited number of instances that can be counted.
2. These are related to the investigation of the application site or basis of the ruling (Tahqiq al-Manat). Therefore, it is essentially not a change in the ruling, but rather a verification of the accuracy of the ruling's application site.

On the other hand, in the case of the jurists' ijtihad, there are many such examples. It is not limited only to changes in the context (manat); for instance, changes in rulings occur due to changes in customs in matters like marriage, divorce, oaths, sales, or other fields. Rather, it can also happen

due to a change in the ijtihad itself. For example, a jurist may prioritize a certain opinion or a specific understanding of a nass, then change that opinion in the presence of a stronger evidence. Or it could happen due to realizing the weakness of a previous evidence, or the emergence of a public benefit, or because a previously obscure harm has become apparent; as a result, the ruling changes based on all these factors.

A Logical Objection:

Establishing the matter of changing rulings might create concern in some people's minds that, under the pretext of change, it will open the way for playing fast and loose with the rulings of Sharia and turn into an excuse for suspending any ruling according to one's own whims.

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(1) See: Al-Furuq 3/283, and see: 1/138.

(2) See: Al-Furuq 1/140.

Linking Sharia with custom and public interest. This caution can often lead toward avoiding discussion on this matter or narrowing it down with the aim of closing this path.

The truth is, there is no valid basis for unnecessary meddling or playing fast and loose with the rulings of Sharia. A person who does such a thing does not hesitate to adopt any path to justify their own views. Therefore, by defining the methodology of the jurists from a reliable Fiqhi perspective, there is no scope for granting legitimacy to such irrational opinions. Rather, this clarification narrows the path for playing with Sharia. Because it identifies and distinguishes the potential areas from others, the wrong path becomes exposed. On the contrary, remaining silent on this matter only strengthens the path of those who follow falsehood.

For this reason, to ensure that Sharia rulings are not violated under the pretext of these reliable Fiqhi principles, emphasis must be placed on the requirement that the individual must be qualified

to understand Sharia rulings so that they do not make mistakes. Alongside this, they must adopt piety and such self-restraint or caution that will protect the field of discussing Sharia rulings from laxity and meaningless actions.

Third Field: Texts (Evidences) that Conflict with Other Sharia Principles and Foundations (Usul).

One of the areas of application for 'Siyasa Shar'iyyah' or administrative politics is addressing conflicting situations among texts or evidences. This is done by giving priority to the stronger evidence. This is a field where there is no definitive text. The mere presence of a text has no influence here, because due to the texts being mutually contradictory, there is a need for ijtihad (independent reasoning) and tarjih (determining preponderance).

This conflict may relate to which of the texts is more predominant in terms of the reliability of the evidence, the clarity of its meaning, or the method of reconciling the evidences, etc. In such a situation, it would fall under the analysis of the meaning and objectives of the text, which is not part of the scope of Siyasa Shar'iyyah discussed here.

Again, this conflict may also be related to the analysis of relevant maslahah (public interest/benefit) and mafsadah (harm/detriment). And this is the specific field intended here. These are certain Sharia rulings that become mutually contradictory in a specific situation. In such circumstances, it is obligatory to choose the better of two benefits and the less harmful of two detriments.

The issues arising here could be:

1. Necessity (Darurah): Sharia principle is: “...while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled.” [Al-An‘am: 119]. From this, scholars have derived the famous legal maxim: “Necessity (or extreme compulsion) makes the prohibited permissible.”

2. Need (Hajat): This is at a lower level than ‘Necessity’ in terms of intensity and constraint. For this reason, its impact on rulings is less than the impact of ‘Necessity’ (1).

3. Sharia-Recognized Maslahah (Benefit): This includes: delaying the implementation of legal punishments (hudud) if there is a risk of significant harm to the offender. The primary rule is swift execution, but in consideration of this benefit, delay is prioritized here.

Similarly, delaying retribution (qisas) if there is an apprehension of fitnah (strife). Explaining the reason for Ali bin Abi Talib (RA)'s delay in taking qisas from the killers of Uthman (RA), Ibn al-Arabi says:

“(For if Ali had taken qisas from them, various tribes would have taken their side, giving rise to tribal conflicts, resulting in a third war. Therefore, he waited until the situation consolidated, the general oath of allegiance (bay'ah) was completed, and the demand for qisas was raised by the guardians of the deceased in the court of a judge, so that it could be decided with justice. There is no disagreement within the Ummah that it is permissible for the Imam to delay qisas if it leads to creating fitnah or destroying unity) (2).”

4. A Greater Benefit (Maslahah) over an Occurred Harm: For instance, accepting a responsibility under a tyrannical ruler—which will be discussed later—for a person who intends to alleviate the suffering of the people. Because the participation of a person like him is a great benefit. In this case, harm is inevitably occurring (whether he participates or not), but due to his entry, the evil or corruption is somewhat mitigated.

It is worth noting that this contradiction between benefit and harm is most pronounced primarily due to the weakness and division among Muslims and the absence of any governing system over them according to Sharia; because as a result...

(1) For a detailed description of the impact of ‘necessity’ (Hajah) regarding Sharia rulings, see: Al-Hajah wa Atharuha fil Ahkam al-Taklifiyyah, Author: Ahmad al-Rashid 1/257-273.
(2) Ahkam al-Quran 4/150.
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Ignorance, the spread of base desires, and the obscuring of truth; essentially, these conditions are the primary reasons for the existence of such contradictions. This is a matter that Ibn Taymiyyah observed and stated:

(The chapter on contradictions is a very broad one; especially in those eras and places where the influence of Prophethood and the Prophetic Caliphate or succession has diminished. This is because these matters manifest more frequently in such contexts. As this deficiency grows, these issues continue to escalate. Their presence is one of the primary causes of fitna (discord) within the Ummah. When good and evil are mixed, ambiguity and necessity arise. Consequently, one group sees only the good side and prioritizes that side, even if it harbors significant evil. Another group sees only the evil side and prioritizes the other side, even if it leads to abandoning a major benefit. As for the moderates who consider both sides, the extent of benefit and harm is often unclear to many of them. Or, even if it is clear to them, they find no one to assist them in performing good and avoiding evil, because base desires have become intertwined with personal

opinions.)(1)

5. The Absence of One of the Necessary Conditions:

The absence of certain conditions required for the implementation of a ruling is considered an obstacle. Being unable to implement a ruling also falls under the category of absent conditions. For this reason, the effectiveness of some Sharia rulings is affected when a capable authority to establish them does not exist.

Therefore, when there is an inability to establish or implement these rulings, it becomes lawful for Muslims to follow the practices observed by the Prophet (peace be upon him) during the early stages of Islam. This includes ignoring the polytheists, enduring their persecution with patience, and refraining from taking action against hypocrites, etc. These rulings were introduced at the beginning of Islam based on the circumstances of the Muslims at that time. Later, after the Muslims grew strong, they were set aside. Thus, these are not universally abrogated (mansukh) rulings; rather, they are rulings tied to specific causes or circumstances. Consequently, in any era, place, or situation where the condition of Muslims mirrors that of the Prophet (peace be upon him) during that period, it is lawful for them to act according to those rulings.

(1) Majmu' al-Fatawa 20/57-58.

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...rulings, which many scholars refer to as 'Munsa' (suspended or delayed), and they include them

under this statement of Almighty Allah: "We do not abrogate a verse or cause it to be forgotten (or suspend it) except that We bring forth [one] better than it or similar to it." [Al-Baqarah: 106]. This is according to the 'nunsa-ha' recitation.

Imam Zarkashi says:

"A command was given in light of a specific reason, then that reason was removed. For example, the command to be patient during times of weakness and numerical inferiority of Muslims, and the command to forgive those who seek a meeting with Allah, etc.; such as commanding good and forbidding evil, not making Jihad obligatory, and similar matters. Then (when strength was gathered), a new ruling was provided at a later time in contrast to it. In reality, this is not abrogation (Naskh), rather it is delaying (Nasa'), as Almighty Allah said: (or I keep it suspended). Therefore, the suspended or delayed matter was for the Muslims to become strong until the command for battle came. And the ruling in a state of weakness is the obligation of exercising patience in the face of hardship."

Through this investigation, the weakness of the opinions of many commentators becomes clear, which they promote regarding the lenient verses, claiming that they have been abrogated by the 'Verse of the Sword' (Ayat al-Saif). The matter is not actually so; rather, these are included under 'Munsa' (delayed ruling). Its meaning is that every command provided in light of a specific reason or situation is obligatory to follow as long as that reason exists. Subsequently, when that reason changes and another situation arises, the ruling also transforms into another ruling; this is not (in a true sense) abrogation. (1)

Imam Jassas says:

"However, if at any time it becomes necessary to deal with the enemy due to the inability of Muslims, or if there is a fear for their own lives or the lives of their children, then it will be permissible to enter into a peace treaty and agreement with the enemy even without the payment of Jizya. Because the prohibition of treaties or peace was originally due to the existence of the strength and dominance of Muslims over the enemy. In the beginning of Islam, making peace was

valid and permissible, and later it was prohibited due to the emergence of the said reason (strength). Therefore, when that reason is removed and the situation returns to the previous state where the Muslims were..."

(1) Al-Burhan fi Ulum al-Qur'an, Imam Zarkashi 2/42-43; for further descriptions of this type of meaning, also see: Nuzum al-Durar fi Tanasub al-Ayat wa al-Suwar, al-Biqa'i 2/94-95; Al-Jami' li Ahkam al-Qur'an 12/48; Al-Itqan fi Ulum al-Qur'an 3/68-69; and for discussion on Munsa, see Ahmad al-Mamari 441-467.

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...that ruling returns due to fear for their own lives from the enemy, which is derived from the legality of a truce (Hudnah). (1)

Ibn Taymiyyah says:

"Among the believers, those who reside in a land where they are weak, or at a time when they are weak, should act upon the verse that commands patience and forgiveness regarding those among the People of the Book and the polytheists who cause harm to Allah and His Messenger. On the other hand, the powerful should only act upon the verse of war against the leaders of disbelief who attack the religion, and act upon the verse that commands war against the People of the Book until they submit and pay the Jizyah with their own hands." (2)

Considering such changes is an acceptable Maslahah-based Ijtihad (independent reasoning

based on public interest) in the field of Siyasah Shari'iyyah (Islamic politics). This is because it involves an exceptional situation related to inability and weakness. As a result, acting upon the primary rulings of the Sharia becomes theoretically non-preferable (Marjuh), because within the principles and regulations of Sharia, there exists something that is more predominant (Rajih) for that specific situation.

In this regard, the following matters should be kept in mind:

— Considering necessity (Hajah), dire necessity (Darurah), and public interest (Maslahah) within their specific boundaries is, in reality, just the application of Shari'ah texts (evidences) and reconciling between them; it does not involve rejecting the texts by citing public interest or logic.

— Observing the occurring circumstances (Awarid) is established on maintaining a balance between both sides and giving priority to what is more predominant. For example, a situation of dire necessity (Darurah) and a situation of need (Hajah) are not the same. Again, need is a higher matter than general public interest. Therefore, the impact of every occurring circumstance depends on its own strength and the strength of the matter opposing it.

— Capability (Istita'ah) is a condition for fulfilling Shari'ah obligations. And capability here refers to Shari'ah capability, which means an ability that does not result in a greater corruption (harm). It does not mean absolute ability without considering the consequences of an action. This is an important meaning about which Ibn Taymiyyah has cautioned and said:

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(1) Ahkam al-Quran 2/276-277, and for this meaning see also: 3/427, 3/573.
(2) Al-Sarim al-Maslul 2/214, and regarding the establishment of this meaning see also: 3/681-683, 2/405-406, Ahkam Ahli al-Dhimmah 2/768.

The Lawgiver does not merely look at simple physical ability when considering legal capacity (Istita'ah Shar'iyyah), but also considers its accompanying circumstances. Therefore, if an action can only be performed alongside significant harm (Mafsadah Rajihah), it will not be considered a legal capacity. For example: a person who has the means to perform Hajj despite facing physical or financial ruin, or a person capable of performing prayer (Salah) while standing despite the risk of worsening an illness, or a person capable of fasting for two months despite the fear of being cut off from their livelihood, and other similar matters. (1)

Fourth field: Texts open to interpretation (Nass Muhtamal).

One of the fields of Siyasa Shari'iyyah (Sharia-based politics) is those texts (nass) that allow for multiple interpretations within the scope of ijtihad and acceptable differences of opinion. In essence, these are valid areas for ijtihad, where a ruler or a mujtahid may lean toward the opinion they deem more accurate and select one of these opinions based on considerations of public interest (Maslahah al-Ammah). In such a situation, it will be considered an acceptable political ijtihad.

An example of this is the ruling on performing Jumu'ah (Friday) prayer without the permission of the Imam (ruler). There is a difference of opinion on this matter (2); therefore, if adopting the opinion that permission is a condition ensures public welfare, then the acceptable ijtihad of Siyasa Shari'iyyah is to choose that specific opinion.

In the case of valid legal issues, if this ijtihad is based purely on academic or theoretical research—for instance, if the ruler chooses and implements a specific opinion because of following (taqlid) his own school of jurisprudence (madhhab), or because of giving preference to

an opinion based on specific evidence—then it will not be included under Siyasa Shari'iyyah. Instead, it will be similar to the definitive texts (Nass Qat'i) mentioned earlier, as he is acting according to the ruling that is predominant in his own view.

However, if this choice or selection is based on considerations of welfare—such as averting harm, blocking the means to prohibited acts (Sadd al-Dhara'i), or addressing a need or specific public interest—then it falls within the scope of Siyasa Shari'iyyah.

(1) Minhaj al-Sunnah al-Nabawiyyah 3/49; see also descriptions on the same topic in: Majmu' al-Fatawa 8/439-440 and 14/103.
(2) Regarding the condition of the Imam's permission for establishing Jumu'ah, the Hanafis have taken a position contrary to the majority (jumhur) of scholars. See: Al-Bahr al-Ra'iq 2/156, Sharh al-Zurkani 'ala Mukhtasar Khalil 2/110, Al-Majmu' 4/583, Sharh Muntaha al-Iradat 1/311.

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Sixth Introduction

The Relationship of Siyasa Shari'iyyah with Similar Terminology

A beneficial method for understanding terminologies and concepts is to compare them with related terms; this allows for identifying points of agreement and difference, which enriches a thorough understanding of the terminology.

When we search for terms similar to the concept of Siyasa Shari'iyyah for comparison, then we...

We can identify the following terminologies:

1- The relationship between Siyasah Shari'yyah and the science of Fiqh:

Siyasah Shari'yyah is a part of the science of Fiqh. This is because the scope of Fiqh is extremely broad, encompassing both definitive and ijtihadi (interpretive/research-based) rulings; it includes both general and specific dimensions as well as theoretical and practical aspects. On the other hand, Siyasah Shari'yyah is limited to a specific portion of all these. It falls under the conceptual (general) aspect associated with practical matters.

However, if we consider Siyasah Shari'yyah as a discipline that consolidates chapters and issues related to politics, it would still be a part of Fiqh; but it would integrate both definitive and conceptual, as well as practical and theoretical aspects within a specialized chapter of Fiqh.

2- The relationship between Siyasah Shari'yyah and the state system:

The principle of any general system is that it is a part of Siyasah Shari'yyah. This is because it constitutes mandatory law regarding matters of public interest. Furthermore, if the laws and regulations within it are consistent with the Sharia, they are considered to be part of Siyasah Shari'yyah.

3. The relationship between Siyasat-e-Shari'yyah and the science of Siyasat-e-Shari'yyah:

If we consider Siyasat-e-Shari'yyah as the science of Siyasat-e-Shari'yyah itself, then there is no need for this type of comparison. However, based on the principle that Siyasat is an acceptable form of ijtihad and an observational method for achieving Sharia-compliant public interest (maslahah), Siyasat differs from the science of Siyasat-e-Shari'yyah in two respects:

First aspect: Siyasat-e-Shari'yyah is an ijtihadi and observational method; conversely, the science of Siyasat-e-Shari'yyah is an epistemological field that consolidates politics-related

chapters and issues.

Second aspect: Siyasat-e-Shari'yyah is limited to a specific dimension of these issues, namely public-interest-oriented ijtihad. On the other hand, the science of Siyasat encompasses these issues as well as other matters.

4. The relationship between Siyasat-e-Shari'yyah and the political system:

The political system is a chapter of political science; therefore, it is a part of the science of Siyasat-e-Shari'yyah. The two aspects previously mentioned in the comparison with the science of Siyasat-e-Shari'yyah are also applicable here. This is because Siyasat-e-Shari'yyah is an observational method and not an epistemological field related to the state's internal system. Siyasat is restricted to the ijtihadi dimension, whereas the political aspect is very broad.

A third aspect can be added to this: Siyasat-e-Shari'yyah extends beyond the internal affairs of the state to other areas...

...for example, it can also be in the case of foreign relations.

5. The relationship between Siyasah Shar'iyyah and Maslahah Mursalah:

The difference between them can be clarified from two perspectives:

First Perspective: Maslahah Mursalah is an influential factor in Siyasah Shar'iyyah and is one of its primary fundamental principles upon which it stands. However, it is not the sole evidence, as Siyasah Shar'iyyah is also based on other evidences.

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Second Perspective: These two subjects differ in terms of their essence (actual nature) and meaning. Maslahah Mursalah is primarily concerned with types of welfare based on Sharia considerations. In contrast, Siyasah Shar'iyyah is related to the analysis of the methods used by a ruler in governing. While the foundation of Siyasah Shar'iyyah may sometimes be this Maslahah, it is not Siyasah Shar'iyyah itself. Similarly, Maslahah Mursalah can be applicable in areas where Siyasah Shar'iyyah plays no role, such as personal matters.

Regarding the differences between Siyasah Shar'iyyah and Maslahah Mursalah, it can further be stated that: Siyasah Shar'iyyah is an administrative medium for protecting public welfare and preventing harmful matters. This is because it employs power to preserve public interest. At the same time, achieving this public welfare is the primary objective of Siyasah Shar'iyyah, which it strives to attain (1).

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(1) See: Al-Maslahatul Ammah min Manzur Islami, pages 111 and 117.

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Seventh Introduction

The Relationship Between Politics and Sharia

Politics is indispensable for Sharia and is an integral part of Sharia itself. Even if politics involves matters that are permissible (mubah) or subject to independent reasoning (ijtihad), it still does not fall outside the rulings of Sharia. This is because Sharia itself has declared those matters as permissible and has allowed room for independent reasoning in them.

However, in the history of jurisprudence (Fiqh), a complexity arose regarding the relationship between politics and Sharia, which a group of Islamic jurists (fuqaha) has discussed.

This complexity was manifested through politics becoming detached from Sharia and moving away by crossing the boundaries of Sharia. A partial reason for this was that they felt compelled to adopt certain public interest (maslahat) paths which they considered to be contrary to Sharia. Consequently, they adopted those paths for the sake of public interest and termed them 'politics' (Siyasat). As a result, it stood in a position of opposition to Sharia. Subsequently, they further expanded the scope of politics and crossed the boundaries of Sharia.

Al-Maqrizi has presented this matter and its connection with the Mongols in detail. He says:

"(This is a Mongolian word, the original root of which is 'Yasa'. The residents of Egypt distorted the word and added a 'Seen' at the beginning, calling it 'Siyasat'. Then they added 'Alif-Lam' at its beginning. Consequently, those who lack knowledge on this matter think it is an original Arabic word. However, the reality is as I have told you. Now listen to how this word originated and spread to Egypt and Syria: when Genghis Khan, the founder of the Tatar Empire, conquered the Eastern countries, defeated the Ong Khan, and established a state, he then formulated certain rules and penal codes. He recorded these in a book named 'Yasa'. Some also call it 'Yasaq', but its original name is 'Yasa'. When he finished formulating it, he had it engraved on steel plates and established it as the law (Sharia) for his own nation.)" (1)

(1) Al-Mawa'iz wa al-I'tibar 3 / 384.

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After reviewing some of the principles and laws of 'Yasaq', Al-Maqrizi discusses the mingling of the Tatars with the Muslim world and the resulting spread of their principles and the extent of their influence during the contemporary reign and sultanate. Among their actions was one that they entrusted to the judges: (matters of prayer, fasting, zakat, and all religious matters related to Hajj). Additionally, matters concerning waqf (endowments) and orphans were also placed under their custody. Sharia-related judicial matters were assigned to them, such as disputes between couples, claims of creditors, and such issues. But the Tatars felt the need to turn towards the principles of Genghis Khan and follow the provisions of 'Yasa' for their own cases. Therefore, they appointed a 'Hajib' (guard or royal official) to resolve customary disputes among themselves. This Hajib would suppress the influential and provide justice to the weak according to the provisions of Yasa. Along with this, if disputes arose regarding the Sultanate's Diwan or administrative matters such as Iqta (land distribution), the responsibility for resolution was also entrusted to him, so that the established rules and accounting principles of the Diwan were implemented (1).

Ibn Taymiyyah explained this historical problem and, criticizing the jurists responsible for it, stated:

(When the Caliphate passed into the hands of the Abbasid descendants and the need for administrative management (Siyasah) of their people arose, those among the jurists of Iraq who had assumed judicial responsibilities found that the knowledge they possessed was insufficient for equitable administrative management. Consequently, they were compelled to establish the 'Mazalim' (Grievance Redressal Department). They separated the governance of warfare from

Shari'ah governance. This issue became so prominent in many regions of the Muslim world that it even began to be said: Shari'ah and Siyasah. As a result, one would call his opponent towards Shari'ah, while another would call towards Siyasah. One ruler was permitted to judge according to Shari'ah, and another according to Siyasah. The reason for this was that those who claimed to be associated with Shari'ah were deficient in the knowledge of the Sunnah. Consequently, many matters arose where, when they judged, people's rights were violated and the penal codes (Hudud) became ineffective. Even bloodshed occurred, wealth was seized, and forbidden acts were legalized. And those who associated themselves with Siyasah began to conduct governance based on arbitrary opinions, abandoning the following of the Quran and Sunnah. Among them, the best were those who...)

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(1) Al-Mawa'iz wal-I'tibar 3/385 - 386.

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...decided without following personal whims and sought justice. Conversely, many of them made judgments based on personal desires and showed partiality towards the powerful and those who gave them bribes, and many other such things (1).

Ibn al-Qayyim continued his critical path regarding this phenomenon, saying:

"This is a place where feet slip and a site of intellectual confusion. It is a narrow station and a difficult battlefield. One group has shown extreme negligence in this matter, resulting in the suspension of penal codes, the loss of rights, and emboldening wrongdoers in their mischief. They deemed the Shari'ah as incomplete, insufficient for the welfare of the servants, and in need of external additions. They closed the proper paths of knowing and implementing the truth for themselves. Despite knowing for certain—and others knowing as well—that it is a realistic truth, they have rendered it useless. They thought that these were in conflict with the principles of Shari'ah. By Allah! These are not in conflict at all with

what the Messenger of Allah (peace be upon him) brought, even if they may conflict with their own understanding of Shari'ah derived through independent legal reasoning (Ijtihad). And the factors that led them down this path are: a type of error in understanding Shari'ah, an error in perceiving the actual situation, and an error in applying one to the other."

When the rulers saw this and observed that the affairs of the people could not be ordered without systems other than what these scholars understood from Shari'ah, they created long-lasting evil and widespread corruption through their political systems. Consequently, the situation became complicated and impossible to rectify. It became difficult for those knowledgeable about the reality of Shari'ah to protect public life from this situation and rescue it from that destruction. On the other hand, another group went to the opposite extreme of the first group; as a result, they legalized matters that are contrary to the laws of Allah and His Messenger. Both groups were harmed because of that deficiency which lay in understanding what Allah sent His Messenger with and what He revealed in His books" (2).

The essence derived from this jurisprudential critique in the Fiqh of Siyasah Shar'iyyah consists of two matters concerning the relationship between politics and Shari'ah

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Clearly states regarding:

(1) Majmu'ul Fatawa 20/ 392 – 393.

(2) At-Turuq al-Hukmiyyah 1/ 30 – 31.

First point: Politics is inherently part of Sharia. Whatever leads to the rectification of people and whatever they need is a part of Sharia. Anything imagined to the contrary is essentially a result of limitations in understanding politics or a lack of knowledge regarding Sharia.

(Therefore, whenever the signs of justice or equity appear and its form is revealed through any means, Allah's Sharia and His religion are present there. Allah, Glorified and Exalted is He, is more knowledgeable, wise, and just than to restrict the paths, signs, and indicators of justice to a specific matter, and then reject what is clearer, supported by stronger evidence, and carries more distinct signs than those).

Therefore, any politics that deviates from Sharia is a politics of injustice and oppression. And every just policy that ensures public welfare is considered acceptable Sharia-compliant politics.

For this reason, when a certain Shafi'i scholar said, "There is no politics except that which is in accordance with Sharia," Ibn al-Aqil refuted him, saying: (If by your statement—"except that which is in accordance with Sharia"—you mean that it should not contradict what Sharia has explicitly stated, then it is correct. But if you mean that "there is no politics other than what Sharia has explicitly stated," then it is wrong).

Therefore, Sharia-compliant politics encompasses everything necessary for achieving public welfare, even if no specific clear text (nass) has been narrated regarding it—as long as it does not contradict any Sharia ruling. The relationship between Sharia and politics is: (Just politics is a part of Sharia itself and one of its branches. And for someone who possesses full knowledge of the objectives of Sharia, applies them in their proper places, and has a sound understanding of the subject, there is no need at all for any other politics alongside Sharia).

Second point: Deficiencies in describing Sharia-compliant just politics have essentially encouraged the audacity to bypass Sharia. This is because they felt that Sharia is insufficient for

achieving human welfare.

Consequently, (it is on the basis of such heinous errors that ruling groups have found the audacity to oppose Sharia. They assumed that Sharia is not capable of governing the world and achieving the welfare of the Ummah. As a result, they transgressed Allah's boundaries, which stemmed from ignorance...

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(1) At-Turuq al-Hukmiyyah 1/31.

(2) At-Turuq al-Hukmiyyah 1/29.

(3) At-Turuq al-Hukmiyyah 1/7.

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Due to both parties' failure to grasp the true essence of Shari'ah, they deviated from justice and engaged in oppression, innovation (bid'ah), and a form of politics that one group included within Shari'ah while the other group regarded as a rival and contrary to Shari'ah. They presumed that Shari'ah is incomplete and incapable of achieving collective human welfare. Conversely, the former group took what they understood from the general and broad directives of Shari'ah and established it as the complete Shari'ah.

(Rather, when a group harbored such a notion, they obstructed the correct path of justice; consequently, numerous rights were trampled. This was because the means available to them for proving rights were extremely limited. As a result, the wicked oppressor found the opportunity to persist in his tyranny and transgression, saying: "There are no two just witnesses to testify against

me." When many rights began to perish in this way, Allah removed the authority of the judicial system from their hands. Subsequently, such matters of governance and politics entered into it through which truth was sometimes upheld and sometimes lost, oppression occurred at times and justice was established at others. Yet, had what the Messenger brought been properly understood, complete public welfare would have resided within it; it would not have necessitated reliance on the politics of rulers who are negligent, hostile, and ignorant of Shari'ah.)

Therefore, this is a tyrannical form of politics, which, although it may achieve some benefit, its harm and loss are far greater. It is for this reason that Izz al-Din ibn Abd al-Salam said in criticism: **"What the proponents of falsehood and the ignorant label as politics is essentially either prioritizing harm over public welfare or abandoning benefit even when it outweighs the harm."**

This is part of an internal jurisprudential (Fiqh) review. For generations, the jurists of Islam have reviewed one another's positions. Successors have corrected the errors of their predecessors and clearly highlighted deviations in the statements of other jurists, their consequences, and the rulings derived from them. This is because their primary objective was to safeguard the religion and ensure the protection of the provisions of Shari'ah.

Therefore, Siyasah al-Shar'iyyah (Shari'ah-compliant politics) is an integral part of Shari'ah. In the view of Shari'ah, the scope of public welfare is extremely broad, yet it requires correct jurisprudential insight. It is a methodology that, while remaining steadfast within the limits of Shari'ah, does not undermine any benefit. Through it, all benefits can be realized and the complete religion can be established. However, the intellect and wisdom of many people are insufficient to comprehend this subtle balance.

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(1) At-Turuq al-Hukmiyyah 1/273-274.

(2) At-Tanbih 'ala Mushkilat al-Hidayah, Ibn Abi al-Izz 5/923.

(3) Al-Qawa'id al-Kubra 1/89.

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In a subtle jurisprudential and psychological analysis, Ibn Taymiyyah highlights the positions of people where the challenge of balancing the pursuit of state power and the strength necessary for political governance, with the expansion of charity and public welfare, and the necessity of upholding justice and the provisions of Sharia, is discussed. He states:

(In this regard, people are divided into three groups: one group—those who are overcome by the obsession with establishing dominance and causing corruption (fasad) in the world. Consequently, they do not consider the consequences in the hereafter. They believe that power cannot endure without distributing gifts and favors. Furthermore, such generosity is not possible without acquiring wealth through unlawful means. Thus, they become both plunderers and indiscriminate givers. They claim: 'It is impossible for anyone to govern people unless they indulge themselves and feed others. For if a pure and honest person were to take responsibility, one who neither consumes [unlawful wealth] himself nor provides it to others, the elites would grow resentful and depose him, if they do not first harm his life or property').(1)

Next, he mentions the second group, clarifying their objectives and his position regarding them:

(Another group consists of those who possess the fear of Allah Almighty and a level of piety that restrains them from committing evil acts, such as oppressing others or engaging

in forbidden (haram) activities. This is a commendable and necessary trait. However, alongside this, they may believe that politics cannot be conducted without the forbidden acts committed by the [first group] people. As a result, they distance themselves entirely from politics. At times, their piety is coupled with internal cowardice, miserliness, or a natural narrow-mindedness. Consequently, they sometimes abandon obligatory (wajib) duties, the neglect of which is more harmful than engaging in certain forbidden acts. Alternatively, they may begin to prohibit obligatory actions, which essentially amounts to obstructing the path of Allah. They might sometimes resort to misinterpretations. In other instances, they may believe that protesting against injustice is an obligation that can only be fulfilled through armed struggle; thus, like the Kharijites, they engage in warfare against fellow Muslims. Through them, neither is the world reformed nor is the religion (Deen) fully established. Nevertheless, many branches of religion and certain worldly matters may be improved through their efforts. For the errors they commit while exercising ijtihad (independent reasoning), they may perhaps be forgiven and their limitations excused. Then again, they may sometimes fall among those whose efforts in worldly life are futile, even though they believe they are performing good deeds. This is the path of those who take nothing for themselves,)

(1) Al-Siyasah al-Shar'iyyah, page 71.

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...and they do not provide for others. They do not deem it appropriate to win over the hearts of disbelievers and wrongdoers, even through wealth or benefits. They believe that giving to those whose hearts are to be reconciled (Mu'allafatul Qulub) is a form of injustice and a forbidden grant.(1)

Thereafter, he mentions the group that fulfills the true rights of Sharia-compliant politics, saying:

(The third group: The moderate Ummah, who are followers of the religion of Muhammad (peace and blessings of Allah be upon him) and are his successors over all people, both common and elite, until the Day of Judgment. This involves spending wealth and resources for the benefit of the people—even if they are the leaders themselves—for the purpose of reforming conditions, establishing the religion, and for those worldly matters that are necessary for the sake of the religion...)

...is necessary. At the same time, maintaining one's own purity, as a result of which he does not accept what is not rightfully his. In this way, they harmonize Taqwa (piety) and Ihsan (excellence): "Indeed, Allah is with those who fear Him and those who are doers of good" [An-Nahl: 128]. (2)

The nature of this separation between politics and Sharia, and the relationship between the separation of religion and state in modern secularism:

At the conclusion of this introduction, it is appropriate to clarify the difference between the problem we are discussing here, which has occurred in the history of Fiqh (jurisprudence), and the separation of religion and state in a modern secular state. This is because the modern concept has no relation to the situation we are describing here. The separation being discussed here relates to violating certain Sharia rulings on the pretext of public interest (Maslahah), even though overall obedience to the rulings of Sharia remains. It is essentially an opposition to some provisions of Sharia due to doubt or personal desires. Their anti-Sharia perspective on public interest is tied to specific issues. This may sometimes involve an acceptable interpretation, while at other times, it may exceed that interpretation to satisfy base desires and greed.

On the other hand, the separation existing in secular thought is founded upon keeping religion

entirely removed from state affairs. There, the basis for considering public interest lies outside the guidance of revelation (Wahi). In those cases, neither the Word of Allah nor the sayings of His Messenger (peace be upon him) carry any weight in prohibiting anything or creating legal obligations.

(1) Al-Siyasah al-Shar'iyyah 79 - 80.

(2) Al-Siyasah al-Shar'iyyah 80 - 81.

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Eighth Introduction

Chapters of Siyasa Shari'ah

If we view Siyasa Shari'ah as a science concerned with the administration of state affairs and public interest, or consider it as a process of the ruler's perspective and ijtihad (independent legal reasoning) in conducting state activities, then the chapters included in Siyasa Shari'ah, or those where its legal issues (masa’il) are most likely to be found, can be categorized into contemporary legal chapters. They are:

1. **General Authority:** Matters related to governance, the rights and responsibilities of the ruler, the rights and responsibilities of the citizens, and what is referred to in the modern era as the political and constitutional system.
2. **Judicial System:** The principles related to the methods of filing lawsuits and legal proceedings in court, as well as the regulation of investigation, indictment, and arrest processes.
3. **Financial System:** Concerned with the state's sources of revenue and its sectors of expenditure.
4. **Economic System:** Concerned with the organized management of wealth and assets and the methods of investing them.

5. **Criminal System.**

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6. International system and international relations (1).

And these are mostly fields of Sharia issues because they are related to public interest, and there is a great need for Maslahah-based (public interest-oriented) Ijtihad in these cases.

We can add a seventh important field to this, and that is:

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(1) See: Al-Madkhal ilas Siyasah ash-Shar'iyyah 58-61, Adwa' alas Siyasah ash-Shar'iyyah 122-124.

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7. Family system: This has occurred due to the codification of the present time, which has brought marriage, divorce, and related matters under the jurisdiction of the law. As a result, Siyasah Shar'iyyah has entered this domain from this perspective.

If we examine these chapters, we will see that they are very extensive, encompassing almost all the issues of Fiqh. To bring all chapters of Fiqh under the scope of organized research, only the eighth field remains to be added, and that is:

8. Acts of Worship (Ibadat): The reason for this is that when harm or public interest exists which

demands political intervention, Siyasah Shar'iyyah can enter the realm of worship as well. If Siyasah Shar'iyyah is viewed as an independent science, then adding worship to it might not be appropriate, because the issues of worship are not included in the scope of current research. Conversely, if it is considered a method of analysis and Ijtihad, then it is important to include it here to complete the chapters related to the scope of Siyasah Shar'iyyah.

It is necessary here to remind of the difference between the science of Siyasah Shar'iyyah and the perspective of acceptable political Ijtihad in these fields. Those who see it as a branch of science discuss all issues related to politics. And those who see Siyasah Shar'iyyah as an acceptable Ijtihad, include only the application of public interest-related Ijtihad or matters related to it in these chapters.

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Ninth Introduction

The Legality of Acting According to Siyasa Shari'iyyah

Acting according to Siyasa Shari'iyyah (Shari'ah-compliant governance/policy) is a valid matter established through multiple Shari'ah principles and documentary evidences. Before mentioning the definitive Shari'ah principles in its favor, I wish to present two important points:

First Point: Using the terminology "Legality of acting according to Siyasa Shari'iyyah" is more accurate than using "The Authority (Hujjiyyah) of Siyasa Shari'iyyah." This is because Siyasa Shari'iyyah is not an independent evidence like Ijma (consensus) or Qiyas (analogy) for which an evidentiary basis for its authority must be sought; rather, it is a special form of Ijtihad (independent legal reasoning) for which the evidence of its legality is sought. Therefore, regarding any matter, it would not be correct to say that "it is permissible (mubah) or prohibited (haram) by the evidence of Siyasa Shari'iyyah." Because Siyasa Shari'iyyah is not itself an evidence, but rather a valid form of Ijtihad. In the field of extracting rulings from evidence (istidlal), it is a valid methodology like the Ijtihad of reviewing evidences, but it is not an evidence in itself. Just as it cannot be said regarding any ruling that "it is haram according to the evidence of Ijtihad," rather, Ijtihad is a methodology or process that operates based on evidences. Similarly, Siyasa Shari'iyyah is an acceptable form of Ijtihad which is proven by Shari'ah evidences and principles.

Second Point: Siyasa Shari'iyyah encompasses several aspects and stages. Some of these are related to the mandatory duty of the ruler to establish Shari'ah, the responsibility for the implementation of which has been entrusted to him. Again, some steps are related to subsidiary matters, such as blocking the path to harm ('Sadd al-Dhara'i') or alleviating hardship. Other aspects are related to limiting permissible matters or resolving disputes. Therefore, when arranging the evidences in favor of the legality of acting according to Siyasa Shari'iyyah, the document must be such that it proves the legality of the complete concept of Siyasa Shari'iyyah.

This method is more organized than citing all such evidences in isolation, where each evidence presents proof for a specific subsidiary issue of Siyasa Shari'iyyah (Shari'ah Politics). For example: citing all such evidences from the Quran and Sunnah which bear proof for the practical details of Siyasa Shari'iyyah. In this case, each specific evidence provides proof for one part of Siyasa Shari'iyyah, but it cannot be presented as evidence for Siyasa Shari'iyyah as a whole

unless it is considered as a general principle. This is because proof for a subsidiary matter does not possess the qualification to be the evidence for the primary subject.

Mention of partial or branch-specific evidences for the legality of Siyasa Shari'iyyah is found among some previous authors—such as Ibrahim Khalifah, who is famous as Dade Efendi. Because for him, Siyasa Shari'iyyah was based on a narrow concept related to criminal law; therefore, there is no problem in mentioning partial evidences there, since every partial evidence provides proof for the relevant ruling.

Shari'ah Principles on the Legality of Acting According to Siyasa Shari'iyyah:

Based on the previous discussion, the proofs for the legality of acting according to Siyasa Shari'iyyah include the following principles:

First Principle: General deduced principles; such as: removing narrowness or hardship, blocking the path of evil, public interest, social...

Customs and Istihsan.

These are such innovative principles for each of which multiple evidences exist. For example, the words of Allah the Almighty: “He has not placed upon you in the religion any difficulty.” [Al-Hajj: 78]. And the words of Allah the Almighty: “And live with them in kindness.” [An-Nisa: 19]. And the words of Allah the Almighty: “And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge.” [Al-An'am: 108].

The perspective of considering these principles in support of the legitimacy of Siyasa Shari'ah

(Sharia-based politics) is of two types:

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The first aspect is: Siyasa Shari'ah (Sharia-compliant politics) depends on them; therefore, it is part of those fundamental principles upon which Siyasa Shari'ah is based. Therefore, as long as these principles remain acceptable, Siyasa Shari'ah will also be considered acceptable.

The second aspect is: these principles ensure the necessity of emphasizing the protection of public interest (Maslaha) in changing circumstances consistent with Sharia. And this is precisely the demand of Siyasa Shari'ah. Therefore, the objective of Siyasa Shari'ah moves towards the same goal that these principles aim for.

Second Principle: Overall Sharia principles; such as justice, facilitation, Ihsan (excellence), and mercy. For example, the words of Allah the Almighty: "Indeed, Allah orders justice and good conduct (Ihsan) and giving to relatives and forbids immorality and bad conduct and oppression." [An-Nahl: 90].

The aspect of evidence or proof is that Siyasa Shari'ah is established upon the principle of ensuring justice, Ihsan, and mercy.

Third Principle: Siyasa Shari'ah in the Seerah (biography) of the Prophet (peace and blessings of Allah be upon him). Because the words and actions of the Prophet (peace and blessings of Allah be upon him) are considered evidence. In the case of Siyasa Shari'ah, proof can be found from both his words and actions:

Regarding his words, several Sharia nass (evidences) have been narrated that emphasize considering the beneficial aspects related to public interest. These are numerous proofs, each of which points towards a specific political aspect. These will be discussed in detail in the discourse on Prophetic politics.

And regarding his actions, it refers to his activities in political matters. Since he used to conduct

governance as the Imam or leader of the Muslims. Therefore, following him in this practical politics is a Sharia ruling.

Fourth Principle: The era of the Rightly Guided Caliphs. Political Ijtihad (independent reasoning) was present in the Seerah of the Rightly Guided Caliphs. Although there is disagreement regarding whether the statements of the Companions constitute evidence, it does not affect drawing evidence from the practice of the Rightly Guided Caliphs.

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This serves as a document in favor of Siyasa Shari'ah (political governance), as this evidence is linked to a matter of consensus among the Khulafa-e-Rashidin (Rightly Guided Caliphs), and other Sahaba (Companions) also reached an agreement with them on this issue. Consequently, it is observed as a clear Ijma-e-Sukuti (tacit consensus).

Moreover, an individual statement from any one of them will not be considered a standalone proof. It is for this reason that some differences of opinion are observed among them in certain issues of political Ijtihad. However, the core foundation of political Ijtihad is not a matter of disagreement; rather, they reached a consensus on its legitimacy, even though they differed in some of its secondary branches.

Soon, many examples of the political Ijtihad of the Sahaba (Companions) will be discussed.

Fifth Principle: Acting according to Siyasa is essentially implementing the Maqasid

(Objectives) or purposes of the Sharia:

One of the proofs for the legitimacy of Siyasa Shari'ah is that it implements the Maqasid or objectives of the Sharia. This is because Siyasa Shari'ah is an Ijtihad that fulfills the objectives of the Lawgiver and creates no conflict with them, which in itself proves its legitimacy.

The fact that Siyasa Shari'ah implements the Maqasid of the Sharia is evident from several aspects:

First Aspect: Ensuring public welfare as prescribed by the Sharia and the inclusion of policies to prevent harm. Sharia was primarily revealed to achieve and complete public welfare and to prevent and alleviate harm. Numerous proofs exist on this matter, and Siyasa Shari'ah is primarily diligent in achieving this goal.

Second Aspect: The Sharia's focus on the differences in human conditions regarding certain rulings. Variations in circumstances have justified the enactment of specific rulings by the Sharia. For example, the condition of a wealthy person is not like that of a poor person; therefore, Zakat is made obligatory for the rich but not for the poor. Similarly, the condition of an able-bodied person is not like that of an incapacitated one, and the condition of a wise person is not like that of an ignorant one. Siyasa Shari'ah takes these differences into account in its Ijtihadi perspective; as a result, it implements an acceptable objective of the Sharia.

Third Aspect: The Sharia considers various conditions and sudden obstacles. For this reason, easier provisions have been made for travel and illness, and the conditions of children, the insane, and the intellectually disabled have been taken into account. Siyasa Shari'ah is established primarily with these types of situations in mind.

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Fourth Aspect: Siyasa Shar'iyyah strives to preserve the overarching objectives (*Maqasid al-Kulliyyah*) that the Sharia has considered within the framework of its detailed provisions; such as the preservation of five fundamental elements (the preservation of faith, life, intellect, honor, and property). Similarly, it endeavors to implement the objectives of Sharia in various branches of Sharia—such as politics, criminal law, the judicial system, and so forth.

Legitimate Aspects of Siyasa Shar'iyyah Activities:

When we examine the actions taken by a ruler regarding matters of public interest aimed at achieving general welfare, we find a vast scope and diverse range of activities that fall under the definition of Siyasa Shar'iyyah. These political *ijtihads* (legal reasonings) can be categorized into several areas, each representing a type of Siyasa Shar'iyyah and revealing the legitimate aspects within them, for which various evidences and principles provide proof of acceptability:

1. Assigning state responsibilities; such as appointing ambassadors, governors, officials, and military commanders.
2. Performing mandatory state duties; such as protecting rights, ensuring security, preserving public assets, oversight, and adjudicating between disputing parties in courts. This includes implementing Sharia provisions that are obligatory for the state, such as establishing *Hudud* (prescribed punishments) and preventing vice.
3. Prohibiting certain *mubah* (permissible) acts or imposing restrictions on certain activities.
4. Compelling the following of a reliable opinion when necessary in the administration of the state.
5. Punishment and *Ta'zir* (discretionary punishment).

6. Appointing those who perform *Fard al-Kifayah* (communal obligations).

7. Making decisions on public interest matters entrusted to the ruler, such as declaring a ceasefire or signing a peace treaty (1).

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(1) It is possible to include some of these aspects within others, but I have mentioned them independently as I deem it appropriate to consider them acceptable aspects in the field of Siyasa Shar'iyyah and because they hold influential importance from a *Fiqhi* (jurisprudential) perspective. Therefore, due to their significance and strong impact, they warrant independent discussion.

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Tenth Introduction

Characteristics of Sharia Politics

One of the common expressions in our age is the use of the term "Characteristics of Islam." The aim of this is to define certain general principles by which Islam is identified as distinct from other religions and ideologies. In contemporary writing style, this is a commendable *ijtihad* or effort, arising from a pressing need to write in this vein. The reason for this is that many Muslims have been influenced by Western culture and its intellectual thought patterns; which [aims at] increasing the greatness of faith in human hearts...

...has made the matter of protecting them from this influence inevitable.

This 'Features' approach is a modern method for discussing the beauty of Islam and attracting people's hearts toward it. Contemporary authors have adopted several methods to achieve this goal; they have directly addressed the beauty of Islam or discussed topics that serve the same purpose. This is a vibrant and positive response to contemporary challenges that weaken the position of faith in people's hearts. Consequently, the necessity for intellectual effort in discussing the beauty of Islam and clarifying its true form becomes indispensable.

The efforts of contemporary writers to achieve this goal can be observed in several trends of writing, including:

1. General features.
2. Description of the excellence of legal rulings and Shariah principles.
3. Description of general Islamic principles regarding creed (Aqeedah), worship (Ibadah), and ethics (Akhlaq).
4. Description of Islamic solutions for several contemporary problems.
5. Discussion on various systems such as Islamic economic, political, and social systems.

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6. Discussion of character or morality in Islam, such as kindness, mutual cooperation, good conduct, generosity, and other related matters.
7. Writing about the greatness of Islamic history—from the biography of the Messenger of Allah to the era of the Rightly Guided Caliphs and subsequent historical periods.
8. Describing the flaws and negative aspects of various systems, societies, and ideologies that conflict with Islam.
9. Discussing the welfare, objectives, and goals that the Shariah has brought forth.
10. Describing the Islamic perspective on various concepts and values prevalent in the modern era—such as freedom and human rights.

11. Comparative analysis between Islam and other religions, ideologies, and doctrines (1).

Such excellent methods have been adopted for the purpose of contemporary Shariah-based discourse. A vast number of books have been written on each of these subjects, which vary in quality, theoretical framework, and adherence to jurisprudential (Fiqh) methodology.

In contemporary writing style, discussing 'Features' is one of the most effective methods and a significant entry point.

The primary purpose of writing about these features is to achieve three fundamental goals:

First Goal: Inviting non-Muslims to Islam; presenting the identity of Islam, highlighting its beauties, and

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...by dispelling doubts about Islam.

Second Objective: To create a holistic understanding that distinguishes Islam from other religions, ideologies, and doctrines, so that a Muslim can know the defining boundaries between Islam and other ideologies in all spheres.

(1) Regarding the writing styles of ancient and contemporary authors in describing the beauty of Islam and some books on this subject, see: 'Mahasinul Islam' written by Ahmad Al-Sayyid, pages: 9-13.

It endeavors to maintain the uniqueness of the Islamic philosophy of life and its distinctiveness in all matters; and let the presence of common elements not obscure the fundamental principles of difference.

Third Objective: To strengthen loyalty to the religion, deepen firm belief in its regulations, and achieve satisfaction with its Sharia rulings.

When we look at the contemporary terminology 'characteristics', we observe the following points:

1. It possesses more general qualities; because it discusses such comprehensive and collective principles that highlight the beauty of Islam and the excellence of its regulations. For instance, it is said: one of the primary characteristics of Islam is that it is Rabbani (Divine), or that it is enriched with universality, or other things of this nature. Therefore, these are not a basis for presenting evidence, nor is this a field for the minute analysis of regulations; rather, these help to solidify faith and clarify fundamental differences with opposing ideologies and religions.

2. These characteristics are often repeated across every system of Islam; when you discuss Islam's economic, social, political, or moral systems, or similarly, when you discuss Islamic culture, the Islamic faith, or Islamic Sharia, these characteristics recur. This is not surprising; because these characteristics are inherent to Islam, thus they exist at the root of every system related to Islam. Furthermore, the purpose of defining these characteristics is to distinguish the Islamic system from other systems and to deepen loyalty and love for the Sharia. This is achieved through discussions about Islam or its various systems. Although, when discussing a specific system of Islam, it is more appropriate not to remain limited only to general characteristics but to specify the unique characteristics pertaining to that specific system.

3. These characteristics are derived from research and based on Ijtihad (independent reasoning); therefore, determining their number or specifying their components is primarily a matter of observation and review. However, the important thing is that these characteristics should truly reflect the fundamental principles of Islam. Something should not be mentioned as a characteristic

if it is not actually one, nor is it right to neglect highly important matters. A common error is emphasizing only worldly matters in the description of characteristics; that is, stopping after mentioning only those issues related to purely mundane aspects and not hinting at those that hold special significance.

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...matters related to worship, or deeds of the heart, or the status of faith in the hereafter and similar matters included in the fundamental principles of Sharia.

The compilation of characteristics is influenced by the author's purpose and focus. In this regard, there exists a scope for ijtihad (independent reasoning) or research in identifying a subject as a characteristic and in integrating one characteristic with another, as long as it pertains to word choice and arrangement. However, if the author exceeds this limit and attributes a purpose to the Legislator that He did not intend, or ignores the true purpose of the Legislator, then those characteristics deviate from their intended goal and are no longer considered characteristics of Islam; rather, they become matters imposed upon Islam.

When we examine (1) contemporary research on these characteristics, we can summarize the primary characteristics from among them as follows:

1- Rabbaniyah (Divine Origin): This implies that the rulings are derived from the Revelation (Wahi) sent down from Allah. Therefore, in all cases, Ijtihad is bound by the principle of returning

to the original source of Revelation and a firm (muhkam) interpretation.

2- Comprehensiveness and Perfection: It is comprehensive and complete regarding the affairs of religion and the world, and in promoting welfare and eliminating harm in both individual and collective life.

3- Balance: This maintains a standard of justice regarding all needs, where being careful of one benefit does not lead to the destruction of another. It is an equitable standard that protects the rights of the poor and the rich, the young and the old, male and female, along with all other rights including general and special rights.

(1) For examples, see: Khasaisut Tashri-il Islami, Fathi ad-Duraini 35-46; Musannafatun Nazmil Islamiyyah, Mustafa Wasfi 13-15; Mizatush Shariatil Islamiyyah alal Qawaninil Wadiyyah, Abdul Hamid Tahmaz 53-103; Muwafaqatu Qasidish Shari wa Mukhalafatuha, Tariq Bakiri 363-367; Khasaisul Islamillazi Na'ud Ilaihi, Ismail Ali Muhammad 10-80; Khasaisun Nizamul Iqtisadi fil Islam, Zayed ar-Rummani 41-72; As-Siyasatush Shari-iyyah fi Kitabi Fathul Bari, Salah Anwar 58-64; Fikhu Makasidush Shari-iyyah fi Tanzilil Ahkam, Fawzi as-Sabit 25-33; As-Siyasatush Shari-iyyah, Ibrahim Abdur Rahim 32-43, and 345-366; Usulun Nazari fi Makasidit Tashri-il Islami, Nimr Ahmad as-Sayyid 1/259-358; Al-Madkhalu li Dirasatis Siyasatush Shari-iyyah wa Nazmul Mar'iyyah, al-Gamidi 62-96.

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4- Ideology and Stability: This means its provisions are established upon such firm laws that

they do not change without the fulfillment of their governing causes according to any reliable standard. As a result, it is not subject to whims, fancies, desires, or personal interests.

5- Realism: By its provisions being suitable for all times and places.

6- Moderation: By these provisions being established on a just and optimal middle path, where there is no excess or negligence.

These characteristics are related to the Shariah rulings of the political system or the science of Siyasah Shar'iyyah. When mentioning Siyasah Shar'iyyah as an acceptable method of research and Ijtihad, it is not appropriate to mention these characteristics there. This is because it is a field that allows for Ijtihad, error, and acceptable differences of opinion. Therefore, it is not correct to attribute to it the perfection that exists in these characteristics. Instead, these characteristics attribute qualities to the principles upon which this Ijtihad depends, or to the definitive matters of the Shariah.

Important Cautionary Note Regarding Writing About Characteristics:

To ensure that writing about the characteristics of Siyasah Shar'iyyah is correct—whether it is written like the aforementioned characteristics or the characteristics are defined more precisely—the following points must be observed:

1- Being Truthful in Expressing the Uniqueness of Islam:
Characteristics express the unique aspects of Islam and its provisions. Therefore, these characteristics must be related to firm matters and must collectively reveal the true form and comprehensiveness of Islam. Thus, it is not correct to reveal some aspects and omit others, or to express them in such ambiguous words that truth and falsehood are mixed, nor should they be described in such a general manner that does not express the special uniqueness of the religion of Islam.

2- Importance of Highlighting the Distinct Impact of Each Characteristic:

Therefore, when we discuss the characteristics of Islam, we must highlight the impact of each of them, and...

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The discussion is limited only to describing its meaning and providing evidence of its recognition by Shariah.

For example, what is the impact of the system being divinely ordained? Simply describing its meaning and stating that it is from Allah is not enough; rather, it is necessary to describe what the impact of this divinely ordained system could be in the economic or social fields, or in the overall way of life.

For instance, some people, without being aware of the impact, say: "This is God's law and this is man-made law." Since humans also apply the law that comes from Allah, the limitations mentioned regarding man-made laws exist here as well. Therefore, it is essential to highlight the impact of the characteristics gained because the ruling is based on revelation—which is not possible in any other system. Examples include: the permanence of the ruling and the lack of possibility for change due to shifts in ideology, having firm conviction in it, and the strengthening of obedience to it as it is linked to punishment in the hereafter alongside worldly punishment, as well as maintaining a focus on self-monitoring—all of which are impossible to achieve through human laws. The same applies to other characteristics as well.

The reason for this is that these characteristics seek to prove the uniqueness of Islam, enhance its

status, and solidify obedience to it. The importance of describing its impact to achieve this goal is immense. To gain the capability to prove this, one must have profound knowledge in political science, economics, sociology, and similar contemporary disciplines so that this matter can be executed appropriately.

3 - Remembering that distinctiveness relates to the original source, not to the application:

It is important to ensure that the distinctiveness of these characteristics applies to their original source, not to human application. Therefore, when we discuss the characteristics of Islam's social system and define it as comprehensive, complete, and balanced, these are primarily descriptions of the relevant Shariah rulings. On the other hand, it is not necessary that the social system of a particular country or society will be exactly like that. Rather, the distinctiveness of that specific system depends on the degree of their commitment to observing Islamic rulings, the extent of their research-based efforts to ensure public welfare and eliminate harm, and the adoption of acceptable means to achieve this.

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It is crucial in terms of awareness that the practical limitations observed in various doctrines and ideologies due to deviating from the path of revelation can also be applied to those Muslims who neglect following this path.

And this leads us to the fourth subject:

4 - Distinctiveness of characteristics does not invalidate benefiting from existing systems:

Primarily, the purpose of discussing the characteristics is to clarify the aspects of the distinctive principles. This does not negate the possibility, or rather the legitimacy, of benefiting from other existing systems. This is because the distinctiveness lies within the principles of these characteristics. However, to apply these characteristics in practice, ensuring public welfare and

removing harmful matters...

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...it is necessary to benefit from common experience and proficiency in order to do so.

Therefore, when we discuss the characteristics of politics in Islam in comparison with contemporary liberal democratic systems, we highlight the overall fundamental principles of politics within the provisions of Sharia. This does not mean rejecting all important techniques and beneficial experiences present in contemporary political systems. For being included in Islamic politics and being designated as Sharia-compliant does not mean everything existing must be discarded, or that every medium must necessarily be changed during implementation. Rather, the primary principle regarding means and instruments is legitimacy. Anything that promotes public welfare and removes harm is acceptable, provided it does not conflict with any Sharia provision. Thus, the differences with these systems lie primarily in criteria or sources; there is no disagreement regarding the core principles of considering public welfare, protecting rights, establishing justice, or fulfilling various human needs.

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Eleventh Introduction

Benefits of Siyasa Shari'iyyah

The benefits or outcomes of Siyasa Shari'iyyah can be observed from various perspectives. Essentially, the benefits of Siyasa Shari'iyyah are multifaceted; its benefits lie in the following areas:

1. Mujtahids and rulers.

2. The political system governing the population.

3. The governed or subjects, who are primarily the general public.

4. Jurisprudential (Fiqhi) perspectives and reliable Ijtihad concerning Sharia evidence.

The subject of benefits is extensive and difficult to limit. Every researcher strives to present what they deem most appropriate from their perspective to give meaning to this important topic. Through this, the various facets of the importance of Siyasa Shari'iyyah are uncovered.

The benefits of Siyasa Shari'iyyah are influenced by the same inspirations that encouraged its development. In our current age, there are new influences that have stimulated increased focus on Siyasa Shari'iyyah and accorded it special importance. The major jurisprudential movement that has emerged in the field of literature and research on Siyasa Shari'iyyah was driven primarily by these factors. This is because, through such research, Siyasa Shari'iyyah is viewed as a path toward achieving objectives. In our contemporary era, these stimulating factors—which are also the benefits of Siyasa Shari'iyyah—can be traced back to the following influences and outcomes:

First Influence: Considering Contemporary Changes

These significant factors of the present time have encouraged the necessity of reliable Ijtihad, which takes into account...

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It is essential to present a sound legal (Shari'i) position regarding these monumental

changes—one that can perceive the impact of these factors without contradicting the provisions of Shariah.

Our predecessor jurists—may Allah have mercy on them—authored dedicated works on what they termed 'Nawazil' (novel issues) or 'Waqai' (occurrences). These encompassed new jurisprudential (fiqhi) matters that did not exist during the times of those before them. However, in the modern age, the matter has become significantly more difficult and complex; this is because the current era is characterized by comprehensive change, presenting a reality and a landscape that were previously unknown. This has made the necessity for reliable Ijtihad (independent legal reasoning) indispensable.

The major influential changes of our time can be summarized as follows:

1. The weakness of Muslims across all worldly spheres and the submission of many to the authority of Western powers. This involves their direct influence in shaping human life and thought, resulting in the widespread impact of Western cultural values, ethics, and behaviors.

2. The infiltration of man-made laws and systems, which have now become the foundation of governance in many countries of the Muslim world. Consequently, Shariah is no longer the primary criterion, and the sovereignty of the word of Allah and the word of His Messenger (peace and blessings be upon him) is no longer upheld.

3. Modern newly emerging issues and 'Nawazil' in every field, which have made the need for rigorous and continuous research into these new subjects undeniable. Furthermore, it is crucial to study the transformations brought about by these issues, evaluate the extent of their impact on jurisprudential perspectives, and measure the associated necessities and requirements. These represent massive changes in the economy, politics, and other sectors.

4. Disagreements and fragmentation that have splintered Muslims and eroded their unity. As a result, they have divided into various factions and sub-groups, engaging in disputes over every matter—even regarding the fundamental principles and definitive provisions of Islam.

Consequently, many are rejecting the sovereignty of Shariah and adopting other standards. Perspectives and ideologies have emerged among Muslims that do not submit to Divine Revelation (Wahi) or that follow standards parallel to it. Even among those who advocate for the implementation of Shariah, such discord and division are observed, raising doubts in some minds about the very foundation itself.

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In the case of such major changes, it is essential to have a Siyasa Shar'iyyah (Sharia-compliant politics) that will exercise Ijtihad (independent legal reasoning) to achieve public welfare and remove harm without conflicting with Sharia evidences. This is because these changes lead towards abandoning the Sharia, turning away from it, and mixing truth with falsehood. As a result, people turn away from following the Sharia, and the enemies of Islam use this situation to make people indifferent to their religion and create doubt in their minds about Islam being suitable for all times and places. In such circumstances, Siyasa Shar'iyyah steps forward to prove the futility of these claims. It proves that through Ijtihad within the boundaries of Sharia, it is possible to achieve public welfare, eliminate harm, fulfill needs, protect rights, and adapt to changing situations.

Second Effect: Independence from man-made laws and politics.

One of the greatest calamities that has befallen the Muslim world today is acknowledging submission to anything other than Revelation (Wahi) in the fields of the judiciary and law. In many countries of the Muslim world, imported laws have now become the judicial standard, even though

they conflict with Revelation. This situation has encouraged the respected Ulema (scholars), Da'is (callers to Islam), and reformers to focus on the subject of Siyasa Shar'iyyah, so that it can serve as an alternative to those imported systems. This is so that people do not have to resort to these imported systems under the pretext of necessity or public interest; rather, Siyasa Shar'iyyah emerges as an alternative that will protect the Muslims.

This focus is built upon the awareness that negligence in acceptable political Ijtihad plays a major role in resorting to man-made laws and helps sustain and strengthen their existence. This is not a new phenomenon; in Islamic history, politics arose in opposition to Sharia primarily due to flaws in jurisprudential (Fiqhi) perspectives regarding the consideration of acceptable public welfare. This forced rulers to adopt a political path parallel to the Sharia judicial system so that they could achieve their interests; subsequently, they gravitated towards oppression and injustice, as we mentioned earlier in the discussion between politics and Sharia.

And this is not presenting any justification for abandoning the Sharia, but rather it is investigating all those reasons that lead towards it, so that we can be wary of them. Otherwise, violating the provisions of Sharia is in no way permissible for a Muslim.

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Even if a jurist (Faqih), ruler, or anyone else shows laxity in acting upon it, every individual will remain responsible for their own actions. There will be no excuse for anyone due to the negligence of others.

Third Effect: Establishing the rule of Sharia in practical life.

Turning away from these man-made systems will only be possible when the rule of Sharia is established and it becomes such a supreme constitution that no other law can override it. This was the situation throughout the long history of Muslims. Until the Muslim Ummah was attacked

by man-made laws after colonialism, no judicial system other than the provisions of Sharia was in effect regarding their lives, property, and honor.

Therefore, 'Siyasa Shar'iyyah' (Sharia-compliant politics) is a means of establishing Sharia in practical life. It is such a subject...

Proper knowledge of legal provisions, their application methods, along with conflicting contemporary changes, and consideration of conditions regarding capacity, feasibility, and consequences, demand deep research-based efforts. All of this necessitates *Siyasah Shari'yyah*; without it, establishing Shariah is not possible.

In practical application, Shariah theoretically reinforces faith in and perception of its superiority. It highlights those fundamental principles of justice, ethics, and mercy upon which Shariah is established. Therefore, *Siyasah Shari'yyah* is the path and means to reach this ideal from both theoretical and practical perspectives. This is an area that clearly demonstrates the difference between Islam's operational methodology in governance and other systems.

Fourth Effect: Ensuring public welfare and removing harm in the management of human affairs.

One of the most beneficial outcomes of *Siyasah Shari'yyah* is that it promotes public welfare and removes harm from people. This is not achieved through mere wishful thinking; rather, its attainment requires genuine *ijtihad* (intellectual endeavor), tireless effort, and following divine rules of empowerment. All these significances are realized through the concept of *Siyasah Shari'yyah*.

Fifth Effect: Activating contemporary ijtihad and strengthening its tools.

This is an essential outcome required to develop the capacity for achieving welfare and removing harm. In the current era, reaching welfare has become complex and intertwined with numerous factors.

If *ijtihad* in the science of jurisprudence (*Fiqh*) means the maximum application of capacity to reach a Shariah ruling, then for a complex age like ours, reaching those rulings demands an application of capacity that encompasses diverse knowledge and awareness of various systems, which influences the standards of welfare and harm.

One of the commendable effects of Shariah-based politics is its effort to strengthen contemporary *ijtihad*, which considers the benefits achieved according to Shariah principles and prevents harm.

Strengthening *ijtihad* includes prioritizing the *Fiqh* of contemporary reality, studying the sciences and knowledge that influence the development of frameworks, and being diligent about the tools and mediums that influence thought and behavior. It is impossible to achieve welfare, fulfill needs, and prevent harm by neglecting these modern fields.

Sixth Effect: Uniting Muslims.

Being united, consolidating ranks, and bonding hearts are matters that increase welfare, decrease harm, and alleviate uncertainty. This is the very path that Shariah-based politics ensures. Because it manages human affairs in a general sense, everyone becomes united, and a bond of hearts is created.

Another effect of politics is to strive for a governance that is compliant with Shariah provisions. The implementation of Shariah provisions is the only path upon which people can be united. Without the implementation of Shariah provisions, Muslims cannot unite under any ideology outside of their religion. No matter how much they try to create harmony and closeness among people and prevent harm...

...for, division and difference of opinion will surely manifest. Because nothing else can unite the hearts of Muslims like the Book of their Lord.
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Seventh Effect: Facilitation for People.

Facilitation is undoubtedly an acceptable Shari'ah principle and one of the manifest objectives of Shari'ah. As Allah Almighty has said: "Allah intends for you ease and does not intend for you hardship." [Al-Baqarah: 185]. Therefore, all rulings of Shari'ah are easy. Any crisis or narrowness observed among people is due to their lack of knowledge regarding Shari'ah. This leads them to cling to things that contain narrowness and are not part of Shari'ah. Alternatively, due to negligence in practicing Shari'ah, they distance themselves from the rulings of their religion, resulting in these rulings becoming a burden for them, and they feel narrowness because of their own distance and negligence. Otherwise, there is no narrowness or hardship in the essence of the rulings.

Furthermore, Siyasah Shar'iyyah (Shari'ah-based policy) is an acceptable Fiqhi Ijtihad (jurisprudential reasoning) that strives to implement the objectives of Shari'ah. Among these is the facilitation for people—without contradicting the Shari'ah. Therefore, facilitating in a way that goes against Shari'ah is not part of Siyasah Shar'iyyah. Moreover, Siyasah is a welfare-oriented Ijtihad. And the greatest act of facilitation for people is to bring benefit to them and repel harm from them.

Eighth Effect: Deriving Positive Benefits from Contemporary Experience and Knowledge.

Therefore, Siyasah Shar'iyyah does not invalidate everything currently existing or uproot everything in its quest to achieve Shari'ah-compliant public welfare. Rather, it is a vibrant and prudent Ijtihad that seeks all types of public welfare. Thus, the source of this welfare does not cause any harm; instead, it only emphasizes that it must not conflict with Shari'ah.

Therefore, the demand of Ijtihad in the field of Siyasah Shar'iyyah is to derive benefits from the contemporary experiences and knowledge that have brought great welfare to various countries and nations. While the demand for Siyasah Shar'iyyah to uphold the superiority and authenticity of revelation is to reject other parallel ideologies like liberalism and secularism, it does not mean rejecting those life-oriented achievements, experiences, and knowledge from which people have benefited, their affairs have been reformed, and their rights have been protected.
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Ninth Effect: Controlling the Direction of Ijtihad and Research.

Siyasah Shar’iyyah endeavors to ensure the preservation of two fundamental principles with a very delicate balance in the field of public interest-oriented research. These are: adhering to the boundaries, principles, and irrefutable evidence of Sharia; and considering the attainment of public welfare and the removal of harm. Care is taken here so that one aspect does not dominate the other. This is because the absence of Siyasah Shar’iyyah opens various doors to extremism or laxity in the formulation of laws and the analysis of real-world events. On one hand, in an attempt to prioritize public interest, principles or irrefutable evidence are rendered obsolete, leading to extremism. On the other hand, on the pretext of clinging to evidence, public welfare is neglected,

leading to laxity. At the root of it all lie flaws in perspective and research.

Tenth Effect: Presenting the True Form of Islam and Its Regulations.

This is the fruit of all the preceding benefits. The primary objective is to make people obedient in the service of their Lord, bring them closer to the truth, facilitate the implementation of its regulations, remove doubts and obstacles raised against it, and rectify the path of reaching the truth and understanding these regulations. Through all this, it becomes possible to present the true form of Islam, its system, and its regulations. This is especially vital in a context where extensive efforts to distort the image of Islam, massive distortions, and extreme conspiracies against its regulations are underway, influencing a large segment of Muslims. Perhaps certain misguided positions or opinions have played a role in further deepening these distorted concepts. In such circumstances, reliable Sharia research in the field of Siyasah Shar’iyyah corrects this image and brings it back to the right path by removing deviations.

I have used the phrase 'presenting the true form' here; I did not say 'improving the image of Islam' or 'beautifying its picture.' This is because the Sharia of Allah does not require any external aesthetic enhancement or decoration. It possesses ultimate perfection and excellence in its inherent beauty and grace. Rather, what is needed is to correctly present this form to the people and remove the obstacles that lie in its path.

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Twelfth Introduction

Sources of Siyasah Shar'iyyah in Fiqh Tradition

Emphasizing Siyasah Shar'iyyah—whether through Ijtihad based on public interest (Maslahah) or through attention to various chapters and issues of politics—was highly extensive among early jurists, and the Fiqh materials related to this were also vast. Although in the current era, the

proliferation of independent books and the expansion of new issues and branches of Siyasah Shar'iyyah are occurring on a much larger scale, this does not mean there is a deficiency in traditional (Turathi) manuscripts; rather, they are extremely rich and extensive.

Therefore, it is incorrect to say that the predecessors gave less importance to this chapter. This is essentially a flaw in the analysis, which stems from three factors:

First point: Seeking out specific issues or rulings whose necessity is acutely felt in our age; such as methods of managing state affairs, peaceful transfer of power, the working procedures of the three branches of the state, and mechanisms of supervision and accountability, etc. Consequently, when they do not find satisfactory discussions on these matters in previous books, they assume it is due to a lack of attention to or neglect of these chapters.

Yet, if this flaw exists, it should be attributed to contemporary jurisprudential research, not to earlier jurisprudential writings; because at that time, these discussions were not familiar, and these matters were neither within their capacity nor their necessity.

For this reason, jurisprudential research has prioritized providing basic elements upon which contemporary, changing issues can be constructed; they will not present detailed solutions for matters that were not possible in their era and would serve no public interest (maslahah) in the context of their time. This is why when jurists expanded on describing certain detailed matters...

...according to the state of their time and governance; in this regard, the results obtained will not be very substantial. For instance, detailed descriptions of various ministries or detailed information regarding administrative regions. Because these detailed descriptions, following the prevailing customs (urf) of the time, have no significant lasting impact.

Second point: Seeking a specific method of composition; such as an integrated theory in the field of Siyasah Shari'iyyah (Sharia-based politics), or comprehensive principles governing this subject, or its full philosophy, or experts in this discipline—and other such matters whose importance is undeniable. However, this is related to the needs of each era. Therefore, it is necessary to emphasize political writings according to these objectives. This does not mean that earlier jurists who did not write in this manner should be criticized; for perhaps there was no need for it in their time.

Third point: Seeking specialized and independent books on politics that would compile all related issues and branch-matters. Since the number of such writings is relatively low, some people believe that the attention of jurists toward this subject was weak or insufficient.

Laxity in searching for information from primary sources is the cause of error here. If we examine jurisprudential sources to search for issues of Siyasah Shari'iyyah, we will find them to be extremely extensive.

This means that criticism regarding insufficiency in Siyasah Shari'iyyah should be directed toward a specific ijtihad (legal reasoning) whose flaw or error has been proven, or toward a specific book or author—and their errors must be highlighted with knowledge and integrity. The objective here is not to stifle any form of criticism; for jurists have always engaged in constructive criticism of one another. Internal jurisprudential criticism is an essential element for the development of jurisprudential perspectives. Rather, what is criticized here is the sweeping generalization regarding a lack of attention, which is not correct at all.

We will review the most important topics from these fields and provide descriptions of the notable books in each field:

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First Field: Independent books on the Imamate and general administrative authority (Wilayah).

Among the most important are:

1. 'Al-Ahkam al-Sultaniyya wa'l-Wilayat al-Diniyya' written by Abu al-Hasan al-Mawardi (450 AH).
2. 'Al-Ahkam al-Sultaniyya' written by Abu Ya'la al-Farra (458 AH).
3. 'Al-Ghiyathi' or 'Ghiyath al-Umam fi Iltiyath al-Zulam' written by Abu al-Ma'ali al-Juwayni (478 AH).
4. 'Tahrir al-Ahkam fi Tadbir Ahl al-Islam' written by Ibn Jama'ah (733 AH).
5. 'Husn al-Suluk al-Hafiz li-Dawlat al-Muluk' written by Muhammad bin al-Mawsili (774 AH).
6. 'Tawdih Turuq al-Istiqama fi Bayan al-Ahkam al-Wilayah wa'l-Imamah' written by Ibn al-Mubarrad (909 AH).
7. 'Al-Wilayat' written by Abu al-Abbas al-Wansharisi (914 AH).
8. 'Risala fil-Imamat al-Uzma' written by Muhammad Mayyara (1072 AH).
9. 'Al-Ajwibat al-Hisan fil-Khalifa wa'l-Sultan' written by Abd al-Qadir al-Fasi (1091 AH).

Second Field: Independent books on judicial regulations (Ahkam al-Qada) and other regulations related to this administrative post.

Some important books in this field are:

1. 'Adab al-Qadi' written by al-Khassaf (261 AH), and its commentaries; such as the commentaries of al-Jassas (370 AH) and al-Sadr al-Shahid (536 AH).

2. 'Rawdat al-Qudat wa Tariq al-Najat' written by Abu al-Qasim al-Simnani (499 AH).

3. 'Sinwan al-Qada wa Unwan al-Ifta' written by Imad al-Din al-Ashfurkani (636 AH).

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4. 'Adab al-Qada', Ibn Abi al-Dam al-Shafi'i (642 AH).

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5. Adab al-Qada, as-Suruji (710 AH).

6. Mu’in al-Hukkam ‘ala al-Qadaya wa al-Ahkam, Ibn Abd al-Rafi‘ (734 AH).

7. Mu’in al-Hukkam fima Yataraddadu bayna al-Khasmayn minal Ahkam, Alauddin at-Tarabulsi (844 AH).

Third Field: Independent books concerning Jihad and war.

Among them are:

1. Siyar al-Awza'i (157 AH).

2. As-Siyar, Abu Ishaq al-Fazari (188 AH).

3. Ar-Radd ‘ala Siyar al-Awza'i, Qadi Abu Yusuf (182 AH).

4. As-Siyar al-Kabir, Muhammad ibn al-Hasan (189 AH).

5. Al-Injad fi Abwab al-Jihad, Ibn al-Munassif (620 AH).

6. Mashari' al-Ashwaq ila Masari' al-Ushshaq, Ibn al-Nahhas (814 AH).

Fourth Field: Siyasa Shari'ah (Shari'ah Politics) and independent books concerning the activities of rulers.

Among them are:

1. Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam wa Tasarrufat al-Qadi wal Imam, Shihabuddin al-Qarafi (684 AH).

2. As-Siyasah ash-Shar'iyyah fi Islah al-Ra'i wa al-Ra'iyyah, Shaykh al-Islam Ibn Taymiyyah (728 AH).

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3. At-Turuq al-Hukmiyyah fi as-Siyasah al-Shar'iyyah, Ibn al-Qayyim al-Jawziyyah (751 Hijri).

4. Tabsirat al-Hukkam fi Usul al-Aqdiyah wa Manahij al-Ahkam, Burhanuddin bin Farhun (799 Hijri).

5. As-Siyasah al-Shar'iyyah, written by Ibrahim Khalifa—who is well-known as Dada Afandi (973 Hijri).

And along with it, (the following book) can be included, although it is not specifically written on Siyasa Shari'ah, but because of its relevance to Masalih (Public Welfare):

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6. Al-Qawa'id al-Kubra, or Qawa'id al-Ahkam fi Masalih al-Anam, by Izz al-Din bin Abd al-Salam (660 AH).

Fifth Field: Independent works on wealth and land revenue (Kharaj).

Among them are:

1. Al-Kharaj, by Abu Yusuf (182 AH).

2. Al-Kharaj, by Yahya bin Adam (203 AH).

3. Al-Amwal, by Abu Ubaid al-Qasim bin Sallam (224 AH).

4. Al-Amwal, by Ibn Zanjawayh (251 AH).

5. Al-Istikhraj li-Ahkam al-Kharaj, by Ibn Rajab (795 AH).

Sixth Field: Independent books on the etiquette of rulers and methods of governing the subjects:

Among them are:

1. At-Tibr al-Masbuk fi Nasihat al-Muluk, by Abu Hamid al-Ghazali (505 AH).

2. Siraj al-Muluk, by Abu Bakr al-Turtushi (520 AH).

3. Al-Manhaj al-Masluk fi Siyasat al-Muluk, by Abdur Rahman al-Shayzari (590 AH).

4. Bada'i al-Suluk fi Taba'i al-Muluk, by Ibn al-Azraq (896 AH).

Seventh Field: Individual books on Hisbah (public order and market regulation) and commanding good and forbidding evil.

These include:

1. Nihayat al-Rutba fi Talab al-Hisbah, by Abdur Rahman al-Shayzari (590 AH).

2. Nihayat al-Rutba fi Talab al-Hisbah, by Ibn Bassam (626 AH).

3. Ma'alim al-Qurbah fi Talab al-Hisbah, by Ibn al-Ukhuwwa (729 AH).

4. Al-Kanz al-Akbar min al-Amr bi-l-Ma'ruf wa-n-Nahy 'an al-Munkar, by Ibn Abi Bakr al-Salihi (856 AH).

Eighth Field: Individual books on the rulings concerning Ahl al-Dhimmah (non-Muslim

subjects).

Among them are:

1. Ahkam Ahli al-Dhimmah, by Ibn al-Qayyim (751 AH).

2. Al-Madhammah fi Isti'mal Ahli al-Dhimmah, by Ibn al-Naqqash (763 AH).

Ninth Field: Jurisprudential chapters included within jurisprudential compilations.

These include certain chapters within jurisprudential works that are considered fields of political research, which are: the judicial system (Qada), Jihad, Hudud and Ta'zir (penal codes), fighting rebels (Qital Ahl al-Baghy), and war criminals (Muharibin).

Rules and qualities of the Imams or heads of state.

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Tenth Field: Chapters of compilations regarding Creed (Aqidah).

And this is similar to the Imamate chapter in general books of Aqidah.

The arrangement of this method is highly effective in revealing the vastness of traditional subjects in the field of Siyasah Shar'iyyah (Islamic politics). Additionally, it is possible to present the sources in different ways according to the objective; for example—studying these sources from a historical perspective by following the history of the composition of Siyasah Shar'iyyah and the

stages of its development (1).

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(1) For a brief discussion on the various stages of composition and famous books related to this method, see: 'Al-Madkhal ilas-Siyasah ash-Shar'iyyah wal-Anzimah al-Mar'iyyah', pages 257-310. For a detailed list of everything written on political matters from the second century until the end of the ninth century, see: 'As-Siyasah ash-Shar'iyyah' written by Abdul Ghani Mastu, pages 105-115.

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Chapter Two

Politics of the Era of the Prophet (peace and blessings of Allah be upon him)

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Section One

The Functions of the Prophet (peace and blessings of Allah be upon him)

One of the most important chapters of Fiqh related to Siyasah Shar'iyyah (Sharia-based politics) is the discussion concerning the functions of the Prophet (peace and blessings of Allah be upon him). This is because some actions of the Prophet (peace and blessings of Allah be upon him) are related to political matters.

The intent behind referring to the "functions of the Prophet (peace and blessings of Allah be upon him)" is that regarding certain rulings, the Prophet (peace and blessings of Allah be upon him) acted as a ruler and leader of the people. In some legal cases, he acted as a judge, presiding over trials and resolving disputes between conflicting parties. At times, he fulfilled the role of a lawgiver and preacher of Sharia rulings, and as a Mufti, provided necessary guidance on religious matters. Therefore, the Prophet (peace and blessings of Allah be upon him) was simultaneously an Imam (Head of State), a judge, a preacher, and a Mufti. There may be a lack of awareness among the general public regarding this distinction, which can lead to errors in understanding Sharia rulings due to a lack of knowledge of this principle.

(1) His functions as an Imam or Head of State: This means that these types of actions are reserved for rulers only. It is not permissible for the general public to perform these for the purpose of following the Prophet (peace and blessings of Allah be upon him), as he performed them solely in his capacity as a ruler. Examples include: organizing the military, distributing spoils of war (Ghanimah), and implementing prescribed punishments (Hudud). These are state or administrative regulations established by the Prophet (peace and blessings of Allah be upon him); therefore, subsequent rulers and sultans shall implement them. It is not permissible for anyone else to say, "I will implement Hudud just as the Prophet (peace and blessings of Allah be upon him) did," because in those instances, his role was that of an Imam or Head of State.

(2) Similarly, the Prophet (peace and blessings of Allah be upon him) also fulfilled duties as

a judge: He adjudicated between disputing parties. Examples include: compelling the repayment of debt, effecting divorce, and similar matters. This means that these types of actions...

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Only relates to judges, not for common people.

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(3) Similarly, the Prophet (peace be upon him) acts as a Lawgiver: he conveys to the Ummah their religion and the message of their Lord. Additionally, he acts as a Mufti, who answers people's questions regarding religious rulings, and this is generally applicable to all people (1).

Regarding the rulings of Shariah, this is the most prevalent and serves as the fundamental basis. Therefore, unless it is clarified by some evidence that an action of the Messenger of Allah (peace be upon him) was as an Imam (Head of State) or as a judge, it cannot be deviated from this original basis.

The noble scholars have mentioned some famous examples in support of this rule for distinguishing between the types of Prophetic actions, which include:

First Example:

The saying of the Prophet (peace be upon him): "Whoever brings dead (uncultivated) land to life, it belongs to him" (2). The jurists have differed on two views regarding the explanation of this action of the Messenger of Allah (peace be upon him):

First View: This action was taken as an Imam (Head of State) (3). Based on this, it is not permissible for anyone to cultivate land and take ownership of it without the permission of the

Head of State; because they believe this hadith is established based on the Prophet's (peace be upon him) action as an Imam.

Second View: This action was taken as a Lawgiver, not as a Head of State (4). Consequently, they have made this ruling general for all people; therefore, whoever cultivates any dead land, it will belong to them.

(1) To learn about the principles of Prophetic actions, see: Al-Qarafi's 'Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam', pp. 45-49; Al-Furuq (Difference no. 36), 1/205-209; Ad-Dakhirah, 3/421-422, 6/157-158, 9/160-161. For the views of other scholars, see: Al-Qawa'id al-Kubra, 2/244; Ibn Daqiq al-Id's 'Ihkam al-Ahkam Sharh Ahadith Sayyid al-Anam', 4/377; Ibn al-Qayyim's 'Zad al-Ma'ad', 3/429-430; Al-Subki's 'Al-Ashbah wa al-Naza'ir', 2/285-286; Al-Bahr al-Muhit, 8/254; Sharh al-Zarkashi 'ala Mukhtasar al-Khiraqi, 6/478-479; Al-Isnawi's 'At-Tamhid fi Takhrij al-Furu' 'ala al-Usul', 509-510; Lahunur's 'At-Tawdih fi Sharh al-Tanqih', 2/38-39; At-Tahrir Sharh al-Tahrir, 8/3905-3910; Shah Waliullah Dehlawi's 'Hujjatullah al-Baligha', 1/223-224; Ibn Ashur's 'Maqasid al-Shari'ah al-Islamiyyah', pp. 207-230.

(2) Imam Bukhari narrated this (2335).

(3) This is the opinion of the Hanafi and Maliki schools of thought; see: Badai' al-Sanai', 6/194; Ad-Dakhirah, 6/156.

(4) This is the opinion of the Shafi'i and Hanbali schools of thought; see: Al-Muhadhdhab, 1/423; Ar-Rawd al-Murbi', 2/425.

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Second Example:

The Prophet’s (PBUH) words to Hind bint Utbah: (Take what is sufficient for you and your child in a just manner) (1).

The majority of jurists (2) hold the view that this was a judicial decision. Based on this, it is not permissible for a woman to take from her husband's property without a judicial decree.

Others have expressed the opinion that this is a general law (Shari'ah law). Therefore, if a husband neglects to pay his wife's dues, it is permissible for the wife to take from the husband's property in a just manner (3).

Third Example:

The Prophet’s (PBUH) words: (Whoever kills an enemy and has proof for it, the belongings or spoils (salab) of the slain shall be his) (4).

One group of scholars holds the view that this action of the Prophet (PBUH) was in his capacity as the Imam or head of state. Based on this, the Imam's permission is necessary for a warrior to be entitled to the belongings of the slain (5).

Another group of scholars believes that this extra grant (tanfil) is part of a general law, which is established through the Prophet's (PBUH) words and does not require the Imam's permission (6).

There are many more such examples (7).

(1) Al-Bukhari compiled this, 2/769, Hadith No. 2095.

(2) They are the Hanafis, Malikis, and Shafi'is. See: Al-Mabsut 17/39, Al-Istidhkar 7/94, Mughni al-Muhtaj 3/448.

(3) This is the school of thought (madhhab) of the Hanbalis. See: Al-Mughni, Ibn Qudamah (8/195).

(4) Al-Bukhari compiled this (3142), and Muslim (1751).

(5) This is the school of thought of the Hanafis and Malikis. See: Al-Hidayah Sharh al-Bidayah

2/149, Hashiyat al-Dasuqi 'ala al-Sharh al-Kabir 2/191.

(6) This is the school of thought of the Shafi'is and Hanbalis. See: Nihayat al-Muhtaj (6/144), Al-Insaf, Al-Mardawi 4/148.

(7) For more details on those issues where there is a difference of opinion among scholars due to the determination of the nature of the Prophet’s (PBUH) actions, see: 'Tasarruf al-Nabi (PBUH) bayna al-Imamah wa al-Qada' wa al-Ifta', Fahad al-Muhsin al-Rees, pp. 480-492.

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Therefore, as you can see, existing differences of opinion in determining the nature of the Prophet's actions have become the cause of disagreements among scholars regarding various rulings.

The jurist Ibn Ashur—may Allah have mercy on him—further expanded the scope of describing the Prophet's methods and actions. He mentioned that the Prophet's actions could sometimes be for the purpose of reconciliation, providing advice, teaching etiquette, or giving a sign to someone seeking counsel (1).

The inclusion of these categories under the Prophet's methods or actions may not be universally accepted. This is because leadership (Imamate), judicial work, and issuing fatwas are specific actions or duties of the Prophet (peace be upon him). Furthermore, his actions as a husband, father, or Imam of prayer could also be included among these various responsibilities that the Prophet (peace be upon him) performed.

The matter of providing advice, teaching etiquette, and giving signs relates to the purpose of the speech. This is because, through a command, performance is sometimes made mandatory, while at other times it is for the purpose of counsel or settlement; however, these are not institutional responsibilities like leadership or judicial work.

Therefore, the responsibility of leading prayer (Imamate of prayer) can also be added to the three aforementioned roles. An example of its impact on a jurisprudential issue is—the jurists have differed regarding whose slaughter is considered valid for the sacrifice of animals. Should he be the Caliph or the Imam of prayer? The reason for this disagreement is whether the following of the Prophet (peace be upon him) in this case was as 'Imamate al-Kubra' (state leadership) or as the Imam of prayer (2)?

Or his behavior as an owner of something. One of the evidences presented by the jurists on this matter is the response given in the context of the incident where one of the Mothers of the Believers broke a bowl that had been gifted to the Prophet (peace be upon him).

(1) See: Maqasid al-Shari'ah al-Islamiyyah, Ibn Ashur 212.

(2) See: Jawab Abu Said bin Lub, Al-Mi'yar al-Mu'rab 2/330. Similarly, another example is that some have cited the Prophet's (peace be upon him) omission of supererogatory (nafl) prayers before the two Eid prayers as evidence that he was an Imam then; but Imam Ahmad rejected this. See: Masa'il al-Imam Ahmad lil-Athram, compiled by: Abdullah al-Tariki 2/193, Al-Mughni 3/340. This is a research topic that calls for collecting jurisprudential issues influenced by this principle from the books of various schools of thought (Madhhabs).

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...from one of his wives. The Prophet (peace be upon him) said: "Your mother has become jealous." Then he held the servant back until a bowl was brought from the wife in whose house he

was currently staying. He then gave the intact bowl to the wife whose bowl had been broken and left the broken bowl in the house of the wife where it had been broken. (1)

Then the Prophet (peace be upon him) ordered it to be returned without considering the difference between the two. Various explanations have been given for this, one of which is: (This is not part of a judicial judgment between people upon which their...)

...compelled; rather, it is included within the interference in the private ownership of the Prophet (peace and blessings of Allah be upon him). Because both houses were under his (peace and blessings of Allah be upon him) ownership, and it is externally apparent that the vessels and food items of both houses were his own. (2)

Methodology for Understanding Prophetic Actions

In reviewing Prophetic actions, the honorable scholars have mentioned several helpful principles, among which are:

1- Most matters of Prophetic actions relate to legislation (Tashri‘). Therefore, the general principle is that until there is evidence to the contrary, it will be considered general legislation. (3)

Izzuddin ibn Abdus Salam says: (Among the actions of the Messenger of Allah (peace and blessings of Allah be upon him) are issuing fatwas, judicial work, and the Supreme Imamate or the work of state leadership. For he is the Imam of Imams. Therefore, when any action is manifest from him, based on the majority of the states of his actions, it will be considered a fatwa until evidence to the contrary is found). (4)

Ibn Daqiq al-Eid says: (This is related to a principle: and that is, in such cases when the actions of the Messenger of Allah (peace and blessings of Allah be upon him) fall into a dilemma between legislation and the judicial activities of the rulers, then should it be considered...)

(1) Bukhari narrated it (5225).

(2) Matali'ut Tamam, Ash-Sham'a 182.

(3) See: Sharhu al-Zarkashi 'ala Mukhtasar al-Khirqi 6/479, Al-Furuq 4/46, At-Tamhid lil-Isnavi 509-510, Maqasid al-Sharia li Ibn Ashur 229-230.

(4) Al-Qawa'id al-Kubra 2/244.

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...on providing a ruling or on the second one? And in most cases, it is applied to providing a ruling (1).

2- Considering circumstantial signs: In making a decision whether a behavior or step was taken as the head of state (Imamate) or from the position of a judge (Qada), it is necessary to review the signs related to the said event. This is not a matter of mere conjecture or assumption; rather, it is a detailed research-based work (Ijtihad), which demands a meticulous analysis of a specific event.

When the Prophet (peace and blessings of Allah be upon him) consults with his companions, it is a sign that the matter is related to his steps as the head of state. Again, if the companions adopt a different behavior or step from the Prophet's (peace and blessings of Allah be upon him) action on the same issue, then this is also another sign that in their view, that step was as the head of state (2).

3- Understanding the true nature of each step and the matters included in it. For example, acts of worship are only rulings...

...the possibility of providing legislation (Tashri'). Al-Qarafi stated:

“Know that judicial decisions (hukm) do not enter into any of the acts of worship; rather, only a fatwa or religious instruction applies to them. Therefore, whatever has been narrated concerning matters of worship is considered only as a fatwa” (3).

The essence is that the matter requires detailed analysis in the relevant context; (if an action is observed and it is known on what basis or position it was taken, then the matter is clear. However, if doubt arises, then one side must be prioritized through external evidence) (4).

It is necessary to caution here about an important point: all these actions are part of Shari'ah rulings. They may be obligatory (Wajib), recommended (Mustahabb), or descriptive of validity. However, the real outcome of this principle is determining the person responsible (Mukallaf) for this ruling; that is, is it applicable to the general public, or only to judges and rulers? It has been proven correct that...

(1) Ihkam al-Ahkam 4/377.
(2) See: Actions of the Prophet (peace and blessings of Allah be upon him) as Head of State, Author: Isam Abu Saniyah, page: 912, Journal of Shariah and Legal Sciences, Issue 3, 2015 AD.
(3) Al-Furuq 4/94.
(4) At-Tahbir Sharh at-Tahrir 8/3907.

The principle is established based on several Prophetic Hadiths. Based on this, it is distinct from all those rulings that are not part of the Sunnah intended for imitation; for example, the actions manifested from the Prophet (peace and blessings of Allah be upon him) due to natural human traits and what he usually performed habitually. These are not part of the intentional Sunnah; rather, they indicate mere permissibility (Ibahat).

Similarly, those Prophetic actions are not included in this which he took as measures of public interest in his capacity as Imam or Head of State, such as preparing the army or maintaining security. In this case, it cannot be said that the action itself is the objective; rather, its objective is to achieve public welfare. Therefore, this too will be included among permissible (Mubah) actions.

Regarding some actions related to politics, some in the contemporary era have made mistakes in understanding this principle. They have assumed that it is a ruling specifically related to the Imam or judges. Consequently, they have made it a general principle that political actions are welfare-related tasks that are not mandatory to follow. This is incorrect from two perspectives:

First: To judge the entire field of politics as being included under this principle and to consider every instruction given in political matters as public welfare-based ijtihad—the reference for which is the actions of the Imams. This is incorrect; because this discussion is primarily related to those actions which he took as an Imam, and not to every matter mentioned in the chapter of politics.

(1) For detailed criteria regarding the differences between the states of the Prophet (peace and blessings of Allah be upon him), see: As-Sunnah Wa...

...Silatuhu bil Amali wal Mazahibil Fiqhiyyah, Naji Lamin, pp. 145-149. For Sharia evidence

regarding taking Prophetic actions into account and the distinctions between them, see: **Tasarrufatun Nabi (peace and blessings of Allah be upon him) bainal Imamat wal Qada wal Ifta**, Abdul Muhsin ar-Rais, pp. 461-465, published in the 18th issue of 'Al-Majallah al-Fiqhiyyah as-Sa'udiyyah', 1435 AH.

(2) For detailed research on this matter, see: **Af'alun Nabi (peace and blessings of Allah be upon him) wa Dalalatuha alat Tashri'**, al-Ashqar, 1/219-248. This does not negate the characteristic of being legislation (Tashri') or a ruling from actions performed out of habit, because they prove permissibility (ibahat). However, some refer to it as 'non-legislative Sunnah', meaning that the intention is not to provide a ruling. This matter is broad. See: **As-Sunnah at-Tashri'iyyah wa Ghayrut Tashri'iyyah**, as-Sarrami, pp. 183-184.

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Second: To consider all these matters as non-obligatory laws; this is an error, because these actions are legislation (Tashri'), but they relate to judges and rulers. However, this legislation can sometimes be permissible (mubah), recommended (mustahab), or obligatory (wajib).[1]

(1) For a detailed discussion regarding the distortion of the purpose of this principle by turning the Islamic political system into a mere public welfare system devoid of basis in mandatory Sharia rulings, see: Abdullah al-Azizi's **'Yanbu'ul Wa'yatil Fikriyyah'**, pp. 585-594; Fahad al-Ajlan's **'At-Taslimu lin-Nasish Shar'i wal Mu'aradatil Fikriyyatil Mu'asirah'**, pp. 60-65; Muhammad Shakir ash-Sharif's **'Tahtimus Sanamil Ilmani'**, pp. 224-246; Mustafa at-Tarabulsi's **'Manhajul Bahathi wal Fatwa fil Fiqhil Islami'**, pp. 368-374; As-Sarahi's **'As-Sunnatut Tashri'iyyah was-Sunnatul Ghayrut Tashri'iyyah'**, pp. 47-63; Bastami Said's **'Mafhumu Tajdidid Din'**, pp. 249-250.

Second Chapter

Prophetic Politics

Discussion about Prophetic politics is a discussion about a system of governance led by a Messenger sent from Allah. This makes this system of governance unique in all aspects. By remaining steadfast in morality, justice, and good conduct, and through his efficient management and for the benefit of humanity, he reached the pinnacle of human perfection. The Prophet's (peace and blessings of Allah be upon him)...

Mastering the political aspect fully is not easy, especially because political events following the Prophet (peace and blessings of Allah be upon him) becoming the ruler of Medina are highly diverse, and its educational dimensions are very extensive. Therefore, some important matters related to the formation of the principles of Sharia-based politics (Siyasah ash-Shar'iyyah) will be highlighted here.

Obedience to the Prophet (peace and blessings of Allah be upon him) is also extensive in political matters:

One important principle is that obedience to the Prophet (peace and blessings of Allah be upon him) encompasses all fields of life. This is because the message (Risalat) he brought is a complete message; therefore, he is worthy of obedience in all fields, including the political aspect. His leadership is different from the leadership of anyone else because he was a Prophet even before becoming a leader. In light of the claim of Prophethood, obedience to him is even more

glorious and inevitable. He is worthy of leadership precisely because of his Prophethood. He is the leader of the Muslims because he is a Messenger sent by Allah, who has come with a final and complete code of life. For this reason, obedience to him is not dependent on any prior promise or the consent of those in power, unlike obedience to other rulers. Rather, obeying the Prophet (peace and blessings of Allah be upon him) is obligatory (wajib), even if no one stands with him or even if all people prove him false (1).

If this principle is understood, then what some people of modern times mention regarding the Prophet (peace and blessings of Allah be upon him) is rejected, namely that...

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(1) Minhaj al-Sunnah al-Nabawiyyah 1/82.

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...the idea that he gained his political legitimacy only through the contract of allegiance (Bay'ah) is a limitation in understanding the true nature of the Prophet's (PBUH) guardianship. This is because he did not gain any new matter or authority from the Bay'ah that was outside his message (Risalat); rather, obedience to him was already inevitable even before the Bay'ah. What he gained through this Bay'ah was the acquisition of a group of helpers and Ansar in establishing the Sharia. Therefore, the right or authority that the Prophet (peace and blessings of Allah be upon him) had in managing general affairs was essentially based on his Prophethood.

Therefore, this Bay'ah was regarding a matter that was already obligatory (wajib) upon them; whether they took the Bay'ah or not, following it was necessary for them. (Just as the Bay'ah given by the Companions to the Messenger of Allah [peace and blessings of Allah be upon him] was on a matter that was obligatory even without the Bay'ah. Because it is obligatory to obey what the Messenger of Allah [peace and blessings of Allah be upon him] instructs—whether they take the Bay'ah or not. However, taking the Bay'ah to him was a pledge to fulfill this obligation determined

by the Sharia.)

Ibn Rajab says: (When the Companions of the Messenger of Allah [peace and blessings of Allah be upon him] accepted Islam, he would take Bay'ah from them on following its regulations. And sometimes he would take Bay'ah from them after they had accepted Islam to renew that pledge and to remind them to remain firm in that position.)

Political aspects in the policy of the Prophet (peace and blessings of Allah be upon him):

When we look at the political aspect of his (peace and blessings be upon him) ideal, we can divide it into two fundamental areas:

First area: Practical implementation of governance.

And by this, the purpose is the activities that the Messenger of Allah (peace and blessings be upon him) conducted as a ruler. Because the Prophet (peace and blessings be upon him), on one hand, used to convey the message and explain the laws, and at the same time, he was the ruler of the Muslims. Consequently, he performed...

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(1) See: Minhajus Sunnah an-Nabawiyyah 1/86.

(2) Hashiyatu Ibnu Abidin 2/276.

(3) Ar-Raddu Alas Subki 1/44.

(4) Fathul Bari Libni Rajab 1/106. For a detailed discussion of this concern, see: Al-Hurriyat as-Siyasiyyah al-Mu'asirah fee Daw'i Fiqhis Sahabah 555-569.

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...by performing various responsibilities as a ruler; and this is his activity as an Imam (head of state), which has been discussed previously in the role of Prophetic activities.

And the reason for this is that the Prophet (peace and blessings be upon him) performed duties as a preacher for most laws; however, in some matters, he also gave decisions as a judge or as an Imam. In such cases, it pertains to judges and administrators and is not applicable to all common people.

Some examples of the practical application of these laws are as follows:

1. Entrusting responsibilities and duties of state power: For example, the Prophet (peace and blessings be upon him) used to appoint leadership, send envoys, collect Zakat, conduct small and large military expeditions, send spies, and perform other such tasks that were essential as a ruler to consolidate the state of the people.
2. Protecting people's rights: Through judicial work and dispute resolution, preventing oppression of one another, and through the distribution of grants and spoils of war among them.
3. Fulfillment of Sharia responsibilities: By implementing penal codes and preventing prohibited matters.
4. Making decisions in matters where the Sharia Lawgiver has given the opportunity to choose between multiple options: for example, making decisions regarding prisoners of war.
5. Making decisions on legitimate matters entrusted to him based on public welfare: for example, concluding peace and ceasefire treaties, granting pardons, and implementing reformative punishments, etc.

This vast field encompasses a huge scope of the politics of the Prophet (peace and blessings be upon him). These are matters designated for the Imams and rulers after him; these are such Sharia provisions that rulers carry out, and all such legislative Sunnahs that leaders fulfill. The

status of these provisions can be at the level of necessity, desirability, or permissibility.

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However, it is within the jurisdiction of the rulers; because the Prophet (peace and blessings of Allah be upon him) carried these out as the Imam of the Muslims.

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Second Field: Principles and Partial Branches.

These principles are related to Shari'ah evidence that influences a public welfare-oriented political perspective; they are not merely part of political activities. Rather, they enrich the jurisprudential (Fiqhi) perspective in political and other fields. Their guidance in the political field is observed from two aspects:

First aspect: Determining the course of action when a conflict arises between benefit and harm (Maslahat and Mafsadat). This is a fertile field for Siyasah Shar'iyyah or Shari'ah-based politics.

Second aspect: These reveal reliable methods in various chapters of politics.

Below, we mention some of the most notable of these principles and their practical examples. To clarify the important methods of the jurisprudential perspective, we will present a detailed discussion of some of these:

Firstly: Refraining from killing the hypocrites (so that people do not say that Muhammad kills his companions).

This Hadith has been narrated in several instances, where the Prophet (peace and blessings of Allah be upon him) refrained from applying legal punishments to some individuals, despite them

being deserving of punishment, considering the political context:

In a Hadith narrated from Jabir ibn Abdullah (may Allah be pleased with both of them), he said: (We were in a military detachment during a battle. Then a man from the Muhajirun struck an Ansari man forcefully. Then the Ansari man shouted: "O Ansar!" and the Muhajir man shouted: "O Muhajirun!" Hearing this, the Messenger of Allah (peace and blessings of Allah be upon him) said: "Why this call of Jahiliyyah (ignorance)?!" They said: "O Messenger of Allah! One of the Muhajirun struck one of the Ansar." Then he said: "Leave it, for it is very foul-smelling (detestable)." Abdullah ibn Ubayy, upon hearing this, said: "Have they really done this? By Allah! If we return to Madinah, the more powerful and honorable will surely expel the meaner and disgraced ones from there." When this news reached the Prophet (peace and blessings of Allah be upon him), Umar (may Allah be pleased with him) stood up and requested: "O Messenger of Allah! Give me permission to behead this hypocrite." Then the Prophet (peace and blessings of Allah be upon him) said: "Leave him; let not the people say that Muhammad kills his own companions.") (1)

(1) Imam Bukhari (4905) and Imam Muslim (2584) have narrated the Hadith.

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Similarly, the Prophet (PBUH) made this statement at a second location during the distribution of the spoils of war on the day of the Battle of Hunayn. At that time, a certain hypocrite said to him: "O Muhammad! Be just!" He replied: "Woe to you! If I am not just, then who will be? If I do not act justly, then I have surely failed and suffered loss." Then Umar ibn al-Khattab (RA) said: "O

Messenger of Allah! Grant me permission so that I may kill this hypocrite." He said: "I seek refuge with Allah so that people may not say that I kill my companions."

Why the Prophet (PBUH) refrained from punishing the hypocrites:

The reason for this is that the hypocrites used to mingle with the companions and they did not openly practice disbelief or disrespect Islam. Therefore, if the Prophet (PBUH) had killed them, the matter would have been unclear to most people of that time. They would have thought that the Messenger (PBUH) was killing his own companions and those who were entering his religion. As a result, this would have become an obstacle for people wishing to enter Islam.

Ibn Abd al-Barr says:

(Imam Malik was asked: Why should a heretic be killed, whereas the Messenger of Allah (PBUH) did not kill the hypocrites despite knowing them? He replied: The Messenger of Allah (PBUH) did not kill them based on his knowledge of them while they outwardly expressed faith, because that would have given people the opportunity to say that he was killing them due to personal grievances or for some other reason. Consequently, people would have been deterred from entering Islam.)

Khattabi says:

(Within this lies a great chapter on managing the religion and looking towards the consequences. And that is, people enter the religion based on outward appearance, and there is no way to know what is in their hearts. Therefore, if a hypocrite were punished for his secret disbelief, the enemies of the religion would find a way to distance people from the faith. They would say to their brothers: "If you enter his religion, what safety do you have? Allegations of secret disbelief could be brought against you as well, and through this, your blood and wealth could be made lawful.")

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(1) Muslim (1063) and Bukhari (3138) and (3610) have narrated the Hadith without the additional

part. And this statement is mentioned in the description of the hypocrites in a third instance; Tabarani (8100) has narrated this and its main part is present in the supporting narration (Shahid) of Muslim (2779).

(2) Al-Tamhid, Ibn Abd al-Barr 10/154; and see: Sharh Sahih al-Bukhari, Ibn Battal 8/575.

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Therefore, do not push yourselves towards destruction, because it will be a cause for turning people away from the religion.

From this, it becomes evident that the reason for not killing them relates back to one of two matters:

First matter: The Messenger of Allah (peace and blessings of Allah be upon him) used to judge based on their outward condition. What was manifest from them was not firmly established against them, because they kept their disbelief and enmity ambiguous and did not express it clearly.

Second matter: There was ambiguity in their state, which kept the reason for their killing unclear to many people. Consequently, they would harbor misconceptions about the Prophet (peace and blessings of Allah be upon him), thinking that he was killing his companions; as a result, there was a fear of even greater harm being caused through this.

The aspect related to politics is the second reason. This is because they were deserving of punishment and had committed acts that necessitated it. However, the execution of their

punishment was withheld due to the fear of public discord or harm—specifically, that people would say Muhammad is killing his companions. Therefore, due to the presence of this ambiguity, the application of mandatory punishment upon them was abandoned.

A doubt arises here: the actions of the hypocrites included slandering the Prophet (peace and blessings of Allah be upon him) and insulting Islam. In that case, would it be permissible to let those go who violate the sanctity and dignity of Islam in such a manner in situations like our present times?

Answer: The esteemed scholars have mentioned that this ruling has been abrogated. It was meant for the period of the Muslims' weakness, when they were afraid to apply this ruling. But after that, anyone who slanders the Prophet (peace and blessings of Allah be upon him) will no longer be let go.

Qadi Iyad states: "If a similar matter were to be expressed today by anyone regarding the status of the Prophet (peace and blessings of Allah be upon him)—such as slandering his judgment and raising allegations of following desires and partiality—it would be considered disbelief, making the execution of the speaker obligatory. However, he (the Prophet), peace be upon him, at the beginning of Islam, used to win people's hearts and repel evil with that which is better, and he was..."

(1) A'lam al-Hadith 3/1586; and for similar statements of this meaning, see the discussions of the people of knowledge: Sharh Sahih al-Bukhari, Ibn Battal 8/575; Sharh an-Nawawi 'ala Sahih Muslim 16/139; Kashf al-Mushkil min Hadith as-Sahihayn, Ibn al-Jawzi 3/33; at-Tawdih, Ibn al-Mulaqqin 23/408 and 20/70; al-Ishraf 'ala Nukat Masail al-Khilaf, Qadi Abdul Wahhab 2/961; al-Masalik fi Sharh Muwatta Malik 6/221; and Ahkam al-Qur'an, Ibn al-Arabi 2/544; at-Tahrir wat-Tanwir 10/267.

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Patience was maintained even regarding statements from the hypocrites and those in whose hearts is a disease that were more explicit and suggestive than this.(1)

Many scholars have explicitly stated that this matter was specific to the era of the Prophet (PBUH) and it is an abrogated ruling.(2)

However, this does not prevent the implementation of such a ruling when calamities, weaknesses, and incapacities arise, similar to the early days of Islam, as mentioned previously in the discussion of Sharia rulings that are applicable at a later time (mansa).

Ibn Taymiyyah, describing the state of calamity where such a ruling could be applied, says:

(In summary, the prescribed punishment (hadd) was not applied to a specific individual because his crime was not revealed through Sharia evidence in such a way that it was known to everyone, common and prominent alike; or it was not possible to implement it because it would have caused some people to be reluctant to enter Islam, some would have apostatized, and some groups would have incited war and discord, the calamity of which would have been much greater than the calamity of not killing a hypocrite. The provision for these two reasons remains valid to this day. Except for one matter, and that is—the Prophet (PBUH) likely feared that people might harbor an impression and think that he was killing his own companions for some other worldly purpose like kings; this concern no longer exists in current times.)(3)

He further says:

(Therefore, wherever the influence of hypocrites persists and there is a fear of greater discord in implementing the prescribed punishment upon them than in allowing them to survive, we shall act upon this verse: “and disregard their annoyance” [Al-Ahzab: 48]; just as we do when we are unable to perform Jihad against the disbelievers.)

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(1) Ikmal al-Mu'allim, Qadi Iyad 7/327.
(2) See: Al-Mufhim Lima Ashkala Min Talkhisi Muslim 19/47, Az-Zakhira 12/39, Sharh an-Nawawi ala Sahih Muslim 15/108, As-Sarim al-Maslul 3/900 and 2/414, Fath al-Bari 8/366. As some scholars have mentioned, the matter of forgiving the one who insults the Messenger was the right of the Messenger, but after him, it is not permissible for anyone else to forgive his insulter. See: As-Sarim al-Maslul 2/421, Zad al-Ma'ad 3/441, 3/568, and 1/65.
(3) As-Sarim al-Maslul 3/681.

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We used to act upon the verses of refraining and forgiving them. When strength and honor were attained, we were addressed with this word of His: **“Strive against the disbelievers and the hypocrites”** [At-Tawbah: 73]. Therefore, it makes it clear that, based on the Book of Allah, during the era of the Messenger of Allah (peace and blessings of Allah be upon him), those whose hypocrisy (Nifaq) became apparent were refrained from being killed; because after him, there is

no more Nasikh (abrogation) (1).

Secondly: Abandoning the reconstruction of the Kaaba.

Aisha (may Allah be pleased with her) asked the Prophet (peace and blessings of Allah be upon him) about the Hateem (Al-Jidar): (Is it part of the House?) He said: Yes. I said: Then why did they not include it within the House? He said: Your people did not have sufficient funds. I said: Why is its door high up? He said: Your people did this so they could let in whomever they wished and prevent whomever they wished. And if your people were not so close to the time of Jahiliyyah (ignorance) and I did not fear that their hearts would dislike it, I would have included the Hateem within the House and brought its door level with the ground (2).

Therefore, the Prophet's (peace and blessings of Allah be upon him) abandonment of rebuilding the Kaaba on the foundations of Ibrahim (peace be upon him) was due to the condition of the people of Mecca and because of their recent entry into Islam. He feared that this might create aversion, terror, and doubt among them which would harm their religion; because the honor of the House of Allah was deeply rooted in their hearts and also because of how they had grown up seeing the House in that state (3).

And this Hadith is complementary to that Hadith where it is said: (Lest people say that Muhammad kills his companions). Therefore, this considers the mischief (harm) of exiting the religion, and the first (the issue of the Kaaba) considers the mischief of not entering the religion.

Rulings on reconstructing the Kaaba on the foundation of Ibrahim:

Many of the scholars have clearly mentioned that it was not possible to reconstruct the Kaaba on the foundation of Ibrahim—

(1) As-Sarim al-Maslul 3/ 683.

(2) Bukhari (1584) and Muslim (401) have narrated this.

(3) For the scholars' statements in establishing this meaning, see: Al-Muntaqa Sharh al-Muwatta, Al-Baji 2/ 282; Nawawi's Commentary on Sahih Muslim 9/ 98; At-Tawdih li-Sharh al-Jami’ as-Sahih 11/ 302; Athar al-Mu'allimi 16/ 486.

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...is not among the essential obligations (fara'id), but rather it is among the recommended (mustahabb) matters of Sharia (1), because leaving the Kaaba in its current state will not affect the rulings of Sharia.

For this reason, Imam Bukhari titled this Hadith: **(Chapter: Avoiding certain voluntary matters for fear of people's lack of correct understanding, lest they fall into a more severe trial)** (2). Therefore, he established it as a voluntary matter, not an obligatory one.

Al-Baji says:

(Although it was not obligatory to fully encompass it through architecture, nor was it such a pillar of Sharia that it would not be established without it; rather, it is mandatory to encompass it specifically during circumambulation [Tawaf], and this is possible by maintaining it in its current state) (3).

That the reconstruction of the Kaaba upon the foundations of Ibrahim (AS) is included among the recommended matters is confirmed by three reasons:

Firstly: The rulings and acts of worship related to the Kaaba will not be affected by not completing the construction of the Kaaba upon the foundations of Ibrahim (AS). And that whose abandonment does not result in the omission of an obligatory act, its reconstruction does not become obligatory.

Secondly: The Prophet (peace and blessings of Allah be upon him) did not order its reconstruction after the obstacles were removed. Had this been an obligatory matter related to the House of Allah, it would have been mandatory to rectify it after the cause of the existing harm was gone. Therefore, the absence of Sharia evidence encouraging construction, along with the silent approval of the Prophet (peace and blessings of Allah be upon him), proves that it is not obligatory.

Ibn Taymiyyah says:

(It cannot be said that the construction by the Quraysh was forbidden because they had deviated from the foundation of Ibrahim. Consequently, change would have been permissible in this form. For if the matter were so, then change would have been obligatory. Yet the Prophet [peace and blessings of Allah be upon him]...)

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(1) See: Sharh Sahih al-Bukhari 1/205, Sharh Musnad ash-Shafi'i by ar-Rafi'i 2/348, Nawawi's commentary on Sahih Muslim 9/89, at-Tawdih li Sharh al-Jami' as-Sahih by Ibn al-Mulaqqin 3/650, 'Umdat al-Qari by al-Ayni 2/204, Sharh az-Zurqani 'ala al-Muwatta 2/248, Athar al-Mu'allimi 16/485 and other opinions that will be mentioned in the main text of the book.
(2) Narrated by Bukhari (126).
(3) Al-Muntaqa Sharh al-Muwatta 2/282. Ibn al-Mulaqqin quoted this passage in at-Tawdih li Sharh al-Jami' as-Sahih 11/302.

...so that he might approve it. When he approved it, it indicated the legitimacy of maintaining the status quo for the public interest and the legitimacy of change for the public interest. Therefore, whichever of these two is more beneficial is what has been ordered to be followed (1).

Thirdly: The senior companions of the Prophet (peace and blessings of Allah be upon him) did not do this, although they were extremely keen on fulfilling obligatory duties and showed no laxity in any matter of Allah's religion. Yet, in their time, the situation had changed and faith in the hearts of the people...

...became strong.

For this reason, it is narrated in Sahih Bukhari from al-Aswad, who said: (Ibn al-Zubayr said to me, "Aisha used to tell you many secrets; what did she tell you about the Kaaba?" I said: She told me that the Prophet (peace and blessings of Allah be upon him) said: "O Aisha! If your people were not recent converts from disbelief (kufr), I would have demolished the Kaaba and made two doors in it: one for people to enter through and another for them to exit." Subsequently, Ibn al-Zubayr implemented this.) (2).

Therefore, Ibn al-Zubayr did not know about this Hadith before asking al-Aswad; and this was among the things Aisha had told him in private. Aisha herself also did not know this Hadith before asking the Prophet (peace and blessings of Allah be upon him). If it were among the mandatory (wajib) duties of Sharia, then the matter would have been clear and not kept private, so that it would be possible to fulfill this duty once the discord (fitna) was removed. Such matters provide evidence in favor of it being recommended (mustahabb), rather than it being mandatory (wajib).

Ruling on the action of Ibn al-Zubayr (may Allah be pleased with him) in rebuilding the Kaaba on the foundations of Ibrahim (peace be upon him):

Ibn al-Zubayr demolished the Kaaba and rebuilt it on the foundations of Ibrahim (peace be upon him). Subsequently, Abdul Malik bin Marwan demolished it again. Scholars have differed regarding the correctness of Ibn al-Zubayr's position. Some have mentioned that this Hadith carries evidence that Ibn al-Zubayr's action was correct; however, after the situation changed, he disliked changing it (3).

(1) Jami'ul Fusus, First Collection, page: 314.

(2) This was narrated by Bukhari (126).

(3) Tafsir al-Qur'an al-Azim, Ibn Kathir 1/441.

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A difference of opinion arose among the honorable companions (may Allah be pleased with them) regarding this matter. Ibn Abbas (may Allah be pleased with him) did not agree with Ali on this, as has come in the narration of Imam Muslim. He believed that the House of Allah (Baytullah) should be kept as it is, and it should remain in the state in which the Prophet (peace and blessings of Allah be upon him) approved it.

Ibn Taymiyyah, while describing this disagreement, says:

“Then when Ibn al-Zubayr took over the administration, he consulted the people on this matter. Some of them saw public benefit in it, while others advised him not to do it. They said: This house of the Kaaba was in its current state during the time of the Prophet (peace and blessings of Allah be upon him), and upon it, people embraced Islam. This was the opinion of Ibn Abbas and a group of people. The jurists have also disagreed on this matter. Some were in favor of maintaining it in its current state, which was the opinion of Ibn Abbas. This is also the statement of Imam Malik and others. It is narrated that when Harun al-Rashid sought advice regarding doing a work like that of

Ibn al-Zubayr, he was advised not to do it. He saw that due to the disagreement of the rulers, the sanctity of the Kaaba might be lost—as one would demolish it to build it like Ibn al-Zubayr, and another would think differently and restore it to its previous state. Again, some among them consider Ibn al-Zubayr's action to be correct. It is said that,”

"Imam Shafi'i also leaned towards this opinion." (1)

Subsequently, the matter was settled on not interfering with the Kaaba and preserving its sanctity. Imam al-Qurtubi said: “People liked this decision of Imam Malik and acted upon it. As a result, it has become like a consensus (Ijma) that it is not permissible to interfere with the Kaaba through destruction or alteration.” (2)

The boundaries of Sharia Politics (Siyasah Shar'iyyah) regarding concern for people's turning away from religion:

These two hadiths provide evidence for an important jurisprudential-political principle, which is—taking care that people do not turn away from religion. Therefore, it will be included among the reliable Sharia objectives (Maqasid). However, the important question here is...

(1) Ar-Raddu 'alal Mantiqiyyin 503 - 504; see also: Jami'ul Fusul, first collection 314 - 316; Mukhtasar Tirmidhi, lit-Tufi 4 / 226.
(2) Al-Mufhim lima Ashkala min Talkhisi Muslim 3 / 439; see also: Al-Fatawa al-Fiqhiyyah al-Kubra, lil-Haytami 1 / 137.

...that amount of harm (mafsadah) which is worthy of prevailing over this benefit (maslahah). The principle of prioritizing the more significant of two benefits or preventing the greater of two harms is not a matter of debate; rather, what demands subtle analysis and review is: what are the criteria for considering a harm as 'greater,' due to which performing the lesser harm becomes permissible?

To determine the limits of abandoning certain rulings due to people's aversion, it is necessary to investigate other branches of Sharia and the extent of this issue's impact there. Through this investigation, we can gain a comprehensive perspective on this matter:

1- In several rulings, even during the era of Prophethood, situations arose that created aversion among a group of people—though the degree varied—but the Prophet (peace and blessings of Allah be upon him) did not abandon the application of those rulings because of it. Examples include:

- In the distribution of spoils of war (ghanimah) from Hunayn, which was the cause of sarcastic remarks against the Prophet (peace and blessings of Allah be upon him) by the hypocrites. Then a man said: "We were more deserving of this than them." The narrator says: When the matter reached the Prophet (peace and blessings of Allah be upon him), he said: "Do you not consider me trustworthy, while I am trustworthy to Him Who is above the heavens? News from the heavens comes to me morning and evening." The narrator says: Then a man with sunken eyes, bulging cheeks, a high forehead, a thick beard, a shaved head, and wearing his waist-wrap (lungi) tucked up stood up and said: "O Messenger of Allah! Fear Allah." He said: "Woe to you! Am I not the most deserving among the inhabitants of the earth to fear Allah?" (1)

- In the case of burning the date palms of the Jews during the battle of Banu Nadir; as recorded in the 'Sahihayn' from Ibn Umar (may Allah be pleased with them both)...

...it has been narrated that the Messenger of Allah (peace and blessings of Allah be upon him) cut down the date-palm trees of Banu Nadir and burned them. And in this context, the following was revealed: **"Whatever you have cut down of [their] palm trees or left standing on their trunks..."** [Surah Al-Hashr: 5] (2). Some scholars have mentioned that this verse was revealed due to the objection from the Jews regarding the cutting down of the date trees, as they considered it 'fasad' (corruption/mischief) (3).

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(1) Narrated by Al-Bukhari (7432) and Muslim (144); the wording is from Muslim.

(2) Narrated by Al-Bukhari (2326) and Muslim (30).

(3) See: Tafsir al-Tabari 23/272.

- And in the incident of the killing of Ka'b ibn al-Ashraf, when the Prophet (peace and blessings of Allah be upon him) ordered Muhammad ibn Maslamah to kill him as a recompense for his causing harm to Allah and His Messenger, some people even criticized this action and labeled it as treachery. It is narrated from Abayah ibn Rifa'ah that he said: When the killing of Ka'b ibn al-Ashraf was mentioned in the presence of Mu'awiyah, Ibn Yamin said: "He was killed through treachery." Then Muhammad ibn Maslamah said: "O Mu'awiyah! In your presence, the Messenger of Allah (peace and blessings of Allah be upon him) is being accused of treachery, and you do not deny it?! By Allah! Your head and mine shall never remain under the same roof, and I will not leave this

person until I have shed his blood." (1) (2)

2. And the Prophet (peace and blessings of Allah be upon him) changed many customs of the Jahiliyyah (Age of Ignorance) which they used to consider sacred and regarded opposing them as a grave matter. These include:

- The Prophet's (peace and blessings of Allah be upon him) opposition to their rituals during Hajj. The Quraysh and those who followed their religion used to stay at Muzdalifah, and they were called 'Hums'. On the other hand, other Arabs used to stay at Arafat. When Islam came, Allah, the Mighty and Majestic, commanded His Prophet (peace and blessings of Allah be upon him) to go to Arafat and stay there, and then depart from there. (3) And he commanded them to assume Ihram during the months of Hajj, whereas in the Age of Ignorance, they considered this to be among the greatest sins on earth. (4) In addition to many other matters.

- His (peace and blessings be upon him) marriage to Zaynab (may Allah be pleased with her). She was the wife of Zayd ibn Harithah, whom the Prophet (peace and blessings of Allah be upon him) had taken as an adopted son. In the Age of Ignorance, if anyone adopted someone as a son, people would call him by the name of the adoptive father and he would become his heir. Finally, Allah the Almighty revealed: **"Call them by [the names of] their fathers."** [Al-Ahzab: 5]. (5)

3. Similarly, the Sharia mandated certain rulings that created aversion among some people. These include:

- The change of the Qibla. Allah mentioned the wisdom behind this in His Book. Allah the Almighty says: **"And We did not make the qiblah which you used to face except that We might make evident who would follow the Messenger from who would turn back on his heels."** [Al-Baqarah: 143].

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(1) The incident of the assassination of Ka'b ibn al-Ashraf has been narrated by Bukhari (4037) and Muslim (119).

(2) Sharh Mushkil al-Athar, Tahawi 1/190-191; Dala'il al-Nubuwwah, Bayhaqi 3/193.

(3) Narrated by Bukhari (1665) and Muslim (151), from the hadith of Aisha (may Allah be pleased with her).

(4) Narrated by Bukhari (1564) and Muslim (198).

(5) Narrated by Bukhari (5088) and Muslim (62). The issue of the laws of inheritance from the period of Jahiliyyah is not mentioned in Muslim.

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As a result of this trial, incidents of apostasy (becoming murtad) occurred among some people, and many hypocrites revealed their hypocrisy. The polytheists said: "Muhammad (peace and blessings of Allah be upon him) has become confused." Consequently, this served as a fitnah (trial) and a means of purification for the believers (1).

Similarly, Allah Subhanahu wa Ta'ala forbade His Prophet (peace and blessings of Allah be upon him) from driving away the weak believers from his assembly in order to fulfill the desires of the disbelievers. It is narrated from Sa'd ibn Abi Waqqas (may Allah be pleased with him), who said: "We were six people with the Prophet (peace and blessings of Allah be upon him). Then the polytheists said to the Prophet (peace and blessings of Allah be upon him): 'Drive these people away so that they do not dare to be bold against us.' He (Sa'd) said: 'I was there, along with Ibn Mas'ud, a man from the Hudhayl tribe, Bilal, and two other men whose names I am not mentioning.' Then whatever Allah willed arose in the mind of the Messenger of Allah (peace and blessings of Allah be upon him), and he pondered over the matter. In this situation, Allah Azza wa Jalla revealed this verse: 'And do not drive away those who call upon their Lord morning and

evening, seeking His countenance' (2)." Essentially, the disbelievers felt a reluctance to attend the Prophet's (peace and blessings of Allah be upon him) assemblies due to the presence of these weak believers. Therefore, they wanted a special assembly for themselves through which the Arabs could recognize their superiority (3).

Therefore, these are proofs of many such matters where the Shari'ah did not consider the harm (mafasadat) of people's reluctance or aversion to be significant, whether in the case of entering Islam or leaving Islam.

Principles for Applying This Rule:

Based on the previous discussion by the people of knowledge—where it was stated that rebuilding the Ka'bah on the foundations of Ibrahim (peace be upon him) was not obligatory—it becomes evident that the consideration of people's reluctance or adverse reaction here was related to recommended (mustahabb) actions, not to obligatory or essential matters. Therefore, the fundamental principle is to not pay heed to people's adverse reactions when it comes to performing obligatory duties. The reasons for this are:

1- The principle is to prioritize the performance of the obligatory over people's reluctance or adverse reaction. This is because the harm of such an adverse reaction is in no way greater than the benefit of performing the obligation.

(1) See: Tafsir al-Tabari 3/156.
(2) This was narrated by Imam Muslim, Hadith No. (2413).
(3) See: Tafsir al-Tabari 11/376.

2- The benefit of performing a mandatory duty (Wajib) is certain, while the harm arising from people's reluctance is speculative. Therefore, a speculative matter cannot be given priority over a certain one.

3- Because it is possible to harmonize attaining the benefit of establishing a mandatory duty and eliminating the harm of reluctance without abandoning the mandatory duty itself.

4- Establishing the mandatory duty is one of the primary reasons for eliminating the harm of reluctance. It is not possible to eliminate the harm of reluctance by abandoning the mandatory duty. If reluctance is associated with the duty itself, repeatedly abandoning it will reinforce the notion in people's hearts that it is a harmful matter, and they will fail to perceive its benefits. Consequently, when they learn that it is a Sharia ruling, their reluctance will increase further. Conversely, if the mandatory duty is established and people's minds become accustomed to it, the reluctance within their hearts will disappear.

This applies within the normal context of implementing rulings. However, if reluctance takes such an intense form that it exceeds normal levels and becomes greater than what the Sharia can ignore—for instance, if there is a fear of many people becoming apostates, or if it causes significant chaos in people's religion or worldly affairs, and there is no other way to remedy it—then in such exceptional and specific situations, the possibility of delaying the establishment of the mandatory duty is considered in light of this harm. However, here, abandoning the duty is not merely related to the harm of reluctance; rather, it is related to such an extreme level of reluctance that it transcends mere distaste and leads toward a greater harm.

For this reason, when a Muslim society is stable and a judicial system based on Allah's Sharia is established, there is no need to consider people's reluctance regarding the application of penal codes (Hudud) and enforcement of rulings. Rather, this consideration only arises when the state system and its capacity are weak. In such circumstances, the reason would be related to

incidental harm, not to the implementation of the primary ruling itself. This is similar to the inability to establish a ruling or abandoning certain mandatory duties out of fear of personal harm.

(1) Ibn al-Arabi cited the Hadith titled "Hands shall not be cut off during war." He then mentioned the opinions of some scholars who discussed considering the harm of the offender fleeing to the enemy's side or to the Dar al-Harb (Land of War). He then raised an objection to this, saying: "I do not know of any basis for this in Sharia, and the establishment of Hudud or penal codes is..."

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Some principles and special examples under Prophetic Statecraft (Siyasah Nabawiyyah):

Third: That which is narrated regarding the incident of the killing of Ka'b ibn al-Ashraf.

The Messenger of Allah (peace be upon him) gave Muhammad ibn Maslamah (may Allah be pleased with him) permission to say something when he ordered him to kill Ka'b ibn al-Ashraf. It is narrated from Jabir (may Allah be pleased with him) that the Prophet (peace be upon him) said: "Who is there for Ka'b ibn al-Ashraf? For he has harmed Allah and His Messenger." Then Muhammad ibn Maslamah said: "O Messenger of Allah! Would you like me to kill him?" He said: "Yes." Muhammad (may Allah be pleased with him) said: "Then give me permission (to say something) so that I may speak (i.e., use a stratagem)." He said: "Speak." (1)

This incident contains several proofs of 'Siyasah Shar'iyyah' or Shariah-based statecraft; such as: the stance regarding a treaty-breaker, the ruling on using ambiguous speech (ma'aridh) in dealing

with him, concerns regarding security, and the punishment for one who insults the Prophet (peace be upon him).

Among the lessons most closely related to 'Siyasah Shar'iyyah' derived from this story is the Prophet's (peace be upon him) granting permission to Muhammad ibn Maslamah to say something. The honorable scholars have provided two opinions in analyzing the nature and explanation of what occurred on the part of Muhammad ibn Maslamah:

First opinion: This was ambiguous or indirect expression (ta'ridh), not an explicit lie.

Qadi Iyad says: (Muhammad ibn Maslamah's statement: "Give me permission so that I may speak!" and the Prophet's (peace be upon him) reply: "Speak" — this is proof of the permissibility of speaking ambiguously for the sake of necessity or need. And accountability will be based on the intention and objective. His statement: "He has exhausted us" — its outward meaning implies causing distress, but its inner meaning is correct; because enduring hardship in the path of pleasing Almighty Allah is Shariah-compliant and there is a reward for it. Jihad, prayer, charity, and all other righteous deeds involve praiseworthy labor and hardship...)

= was what it was upon its inhabitants. And this type of taqiyyah (dissimulation) is not considered in personal matters, but is generally considered in cases of situational complexity and the preservation of tribal solidarity. As stated in some explanations, Ali (may Allah be pleased with him) delayed taking retribution (qisas) from the killers of Uthman (may Allah be pleased with him) while waiting for the situation to calm down, so that no tribal riots would break out. Reference: 'Aridat al-Ahwadhi 6/231-232; and see: Matalit al-Tammam and Nasaih al-Anam wa Manjat al-Khawas wal-Awam, by al-Shamma' al-Hintati 152.

(1) This was narrated by Bukhari (4037) and Muslim (1195).

...and making a commotion regarding worship is blameworthy.(1)

Second opinion: Some scholars believe that what occurred was direct disparagement.

According to this opinion, a strong objection arises regarding the utterance of explicit words of disbelief for that purpose. They have responded to this objection in several ways, of which two aspects are the strongest:

First aspect: The Prophet (peace be upon him) gave permission for this, therefore it [belongs to] the Prophet's (peace be upon him)...

...is specific to it. (2)

Second aspect: If there is a major interest for Muslims and an intense necessity, then uttering words of disbelief (Kufr) is permissible, which would fall under the ruling of compulsion (Ikrah). (3)

In response, it can be said: The matter of the permission given to Muhammad bin Maslamah by the Prophet (peace and blessings of Allah be upon him) allows for interpretation (possibility); no definitive decision can be made regarding this. Furthermore, in the case of evidence, an ambiguous or possible matter cannot be turned into a general rule. This could be permission to utter words of disbelief, or it could also be permission for ambiguous words or subtle hints (Tawriyah). Therefore, there is no sufficiently conclusive evidence in this.

Fourth: Incidents of consultation (Shura) in his biography (Seerah).

An important political principle is to give special importance to consultation. This is a widely practiced Prophetic political method in his biography. Even Abu Hurairah (may Allah be pleased

with him) narrated, saying: "I have not seen anyone consult with his companions more than the Messenger of Allah (peace and blessings of Allah be upon him)." (4)

(1) Ikmal al-Mu'lim 6/177; see: As-Siyar al-Kabir 1/271, Sahih Muslim Sharh an-Nawawi 12/161, Al-Mufhim lima Ashkala min Talkhis Muslim 3/361, Umdat al-Qari 14/277, Fath al-Bari 5/144 and 6/160, As-Sarul Mu'allimi 19/263.
(2) Al-Injad fi Abwab al-Jihad, Ibn Munasif 235.
(3) Al-Ashbah wan-Naza'ir, Ibn Subki 2/132.
(4) Ahmad narrated it in his Musnad (19231) and Musannaf Abdur Razzaq (5720), Ibn Hibban narrated it in his Sahih (4872). Ibn Hajar stated in Fath al-Bari (5/393): its narrators are reliable, but it is Munkati (disconnected).

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The Prophet (peace and blessings of Allah be upon him) consulted with his companions on the eve of the Battle of Badr (1) and on the day of the Battle of Uhud (2). And the instance of him (may peace and blessings be upon him) encouraging people by saying "Give me advice" occurred repeatedly in multiple places (3). He also gave special priority to certain companions regarding consultation; for example, on the day of the Battle of Badr, he consulted with Abu Bakr and Umar regarding the prisoners of war (4). And for consultation regarding giving half of the fruits of Medina to the Ghatafan tribe, he specifically designated the two Sa'ds (Sa'd ibn Mu'adh and Sa'd ibn Ubadah) (5).

Because of the manifestation of this characteristic in his (may peace and blessings be upon him) conduct, the companions would spontaneously offer advice to him. For instance—Sa'd ibn Mu'adh came forward quickly and advised the Prophet (peace and blessings of Allah be upon him) to build a wartime shelter on the day of the Battle of Badr (6). Hubab (ibn al-Mundhir) took the initiative to change the location of the battle on the day of the Battle of Badr (7). Umm Salamah came forward

to offer advice on the day of Hudaybiyyah, and she advised that the Messenger of Allah (peace and blessings of Allah be upon him) should shave his head (8).

Providing advice was not limited only to the political arena; the Prophet (peace and blessings of Allah be upon him) [consulted regarding] the Ifk (false slander)...

In that instance, he consulted Ali and Usama (9), which was a strictly private family matter.

Characteristics of Consultation in the Prophet's Strategy:

Therefore, we can summarize the characteristics of consultation in the strategy of the Prophet (peace and blessings be upon him) from the following points:

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(1) At-Tabari narrated this in his History (11/220), and Ibn Hisham in 'As-Sirat al-Nabawiyyah' (3/162).

(2) See: Sirat Ibn Hisham 2/63.

(3) For instance, his practice of seeking consultation is recorded in the accounts of the event of Ifk; it was narrated by Al-Bukhari (4757) and Muslim (1333). Imam Ahmad (19231) and An-Nasa'i (8628) narrated the events of the Day of Hudaybiyyah, and Ibn Hibban (4872) classified it as Sahih.

(4) Narrated by Muslim (1763).

(5) Dala'il al-Nubuwwah by Al-Bayhaqi (1341); As-Sirat al-Nabawiyyah by Ibn Hisham 4/181.

(6) Al-Bayhaqi narrated this in Dala'il al-Nubuwwah (920); see: As-Sirat al-Nabawiyyah by Ibn Hisham 3/168.

(7) Al-Bayhaqi in 'Dala'il al-Nubuwwah' (3/36) and Al-Hakim in 'Al-Mustadrak' (5654); see also: 'As-Sirat al-Nabawiyyah wa Akhbar al-Khulafa', Ibn Hibban (1/166), and As-Sirat al-Nabawiyyah by Ibn Hisham 3/168.

(8) Narrated by Al-Bukhari (2731).

(9) Narrated by Al-Bukhari (7369).

- Shura (consultation) was not restricted to the political sphere alone; rather, its practice was evident in other domains as well.

- The Prophet (peace and blessings be upon him) sought advice according to the requirements of every situation. Sometimes he consulted a specific group of his elite companions, and at other times, he expanded the scope of Shura to include all the companions.

- From the outset, the Prophet (peace and blessings be upon him) would seek people's advice and opinions when making proposals or expressing objections regarding specific tasks.

- Shura was limited to permissible (mubah) matters. There is no scope for consultation regarding matters prohibited by Shari'ah. This is why he expressed displeasure with Usama bin Zaid (may Allah be pleased with him) when he interceded on behalf of the Makhzumi woman who used to borrow items and then deny having them. He said to him: "Do you intercede regarding one of the legal punishments (Hudd) prescribed by Allah?" (9).

- There was no single fixed method for conducting Shura; instead, the objective was to arrive at the most correct decision through its process.

Some Principles and Signposts of Prophetic Politics:

Fifth: Instances of Forgiveness in His (Peace and Blessings be upon Him) Leadership.

Forgiveness was a fundamental characteristic of his (Peace and Blessings be upon Him) character:

- He used to forgive those among his Companions who made mistakes, such as his forgiveness of Hatib (may Allah be pleased with him) when he wrote a letter to the polytheists (1).

- He also forgave those among the Bedouins who erred, such as his forgiveness of the Bedouin who forcefully tugged at his cloak.

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(1) Narrated by Bukhari (3475) and Muslim (1688).
(2) Narrated by Bukhari (6259).

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...pulled with a violent jerk, leaving a mark on the side of the neck of the Messenger of Allah (peace and blessings be upon him). Then the man said: "O Muhammad! Order that I be given from the wealth of Allah that is with you." The Messenger of Allah (peace and blessings be upon him) turned toward him and smiled, then ordered that he be given something (1).

- He even forgave those who attempted to assassinate him. Regarding one such individual, he said: "(While I was asleep, this man unsheathed my sword. I woke up to find him standing over me with the drawn sword. He asked: 'Who will protect you from me?' I replied: 'Allah.' At that, he sat

down)." The Messenger of Allah (peace and blessings be upon him) did not inflict any punishment upon him (2).

- He forgave the hypocrites. On the day of the Conquest of Mecca, he (Peace and Blessings be upon him) forgave the polytheists. He even forgave the belligerent disbelievers who attacked him; regarding the Battle of Uhud, Abdullah (may Allah be pleased with him) said: "(It is as if I am looking at the Prophet (peace and blessings be upon him) narrating the story of one of the Prophets whose people had beaten him until he bled. He was wiping the blood from his face, saying: 'O Allah! Forgive my people, for they do not know')" (3).

- When Aisha (may Allah be pleased with her) asked him, "Was there a day more difficult for you than the day of Uhud?" He replied: "(I have suffered what I suffered from your people. But the hardest day I faced from them was the 'Day of Aqabah')."

- Despite the extreme hardships he faced, when the Angel of the Mountains offered to crush them by bringing the two mountains together over them, the Prophet (peace and blessings be upon him) said: "(Rather, I hope that Allah will bring forth from their descendants those who will worship Allah alone and will not associate anything with Him)" (4).

The Influence of Forgiveness in Shariah Politics (Siyasah Shar'iyyah):

This Prophetic quality, derived from the policies followed by the Prophet (PBUH), unveils the great significance of Shariah politics. This is a matter that must be kept before the eyes of every person who...

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(1) Bukhari (6809).

(2) Bukhari (843).

(3) Bukhari (1792).

(4) Bukhari (3231) and Muslim (1795).

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...desires to follow his Beloved (PBUH) in any matter of general politics; and we can clarify the matter through the following meanings:

First meaning: Forgiveness comes only after full justice. Because forgiveness is an act of grace and benevolence (Ihsan) towards a person who deserves punishment and retribution. However, we will not limit ourselves to justice alone here; (for it is essential to have a Shariah that includes the provision of governance through justice, and at the same time, it is necessary to encourage people towards forgiveness and call them to accept grace, and this is the Shariah of Islam)(1).

Emphasizing forgiveness and describing its excellence means that we have also surpassed the importance of the necessity of justice and the obligation of its establishment. Therefore, compared to justice, forgiveness is like a voluntary (nafl) act in contrast to an obligatory (fard) one, which is included in perfection and excellence.

Second meaning: Politics based on forgiveness and pardoning cannot be successful in achieving the fullness of this quality unless it possesses certain qualities that aid in forgiving and pardoning: such as maintaining a good opinion of people, loving them, wishing for their well-being, striving to achieve what is beneficial for them, and making every effort to keep them away from everything that causes them pain or harm. For this reason, Allah praised our Prophet Muhammad (PBUH), saying: "There has certainly come to you a Messenger from among yourselves. Grievous to him is what you suffer; [he is] concerned over you and to the believers is kind and merciful." [At-Tawbah:

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Third meaning: Forgiveness demands patience and the endurance of hardship. The leader should not rush, and the system of governance should not be quick to impose revenge and punishment; rather, in certain cases, it should be delayed even for a person deserving of punishment. Because punishment is not a tool for satisfying a grudge or taking revenge; rather, it is merely a means of correction when necessary.

Fourth meaning: Forgiveness demands intelligence, wisdom, and foresight. In the case of punishing an offender, it does not look only at immediate and partial interests but considers its strategic and far-reaching impacts.

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(1) Al-Jawab as-Sahih liman Baddala Din al-Masih, Ibn Taymiyyah, 5 / 105.

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Purification of the soul, unity, and granting forgiveness in the preservation of rights have a far-reaching and profound impact. Anyone who neglects to consider this will become a cause for fragmenting unity: "And if you had been rude and harsh-hearted, they would have dispersed from around you." [Al-Imran: 159]

Fifth meaning: The matter of forgiveness demands the necessity of adopting strictness in the preservation of rights. Therefore, if someone who deserved punishment is forgiven and pardoned, then being cautious regarding the rights of those who have committed no offense is even more paramount. When the Sharia calls for forgiving a person liable for punishment and describes its

excellence and beauty, then those who have not engaged in any crime are even more deserving of care and importance. This reinforces the necessity for us to be vigilant so that mandatory or essential rights are not violated. Muslims should strive to create such security arrangements or assurances that will protect those rights, safeguard them from any transgressions, and keep them safe from any form of unjust interference. A system that values forgiveness and pardon can never show laxity in such matters.

Sixthly: Incidents of penal codes and punitive measures in his (peace and blessings be upon him) policy.

The perfection of Prophetic politics is that it is not always limited solely to forgiveness. Although forgiveness was predominant in his (peace and blessings be upon him) ideals, adopting strictness and administering punishment are also important matters. Correct and wise politics is not consistent without this. For this reason, the Prophet (peace and blessings be upon him) administered punishment in several instances:

- For example, giving instructions to sever relations with those from among the noble Companions (may Allah be pleased with them) who stayed behind from the Battle of Tabuk. (1)
- Expressing the intention to burn down the houses of those who remain absent from performing prayers in congregation. (2)
- And the Prophet (peace and blessings be upon him) legalized the seizing of the belongings of a person caught hunting within the sacred boundaries (Haram) of Medina by the person who finds him. (3)

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(1) Imam Bukhari (4677) and Imam Muslim (2769) narrated this from the Hadith of Ka'b ibn Malik.
(2) Imam Bukhari (2420) and Imam Muslim (651) and others narrated this from the Hadith of Abu Hurairah.
(3) Imam Muslim (1364) and Abu Dawood (2038) and others narrated this from the narration of

Sa'd ibn Abi Waqqas (may Allah be pleased with him).

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This is a collection of certain branches and partial rulings from the Sīrah (biography) of the Prophet (peace be upon him), which are closely related to Sharʿī politics. These include some important detailed rulings and principles within the scope of political-jurisprudential analysis (1).

(1) I had mentioned several other rulings and signs of Prophetic politics here and provided detailed discussions in describing certain related rulings. However, I subsequently realized that there is no scope for a comprehensive discussion of those matters here. Therefore, I have limited myself to mentioning only a few aspects of these branches and partial rulings and have presented a brief statement on the subject. Due to the importance of the topic and the vastness of its components, I have prioritized writing a separate book on Prophetic politics. May Allah Almighty make the writing of that book easy and grant guidance, assistance, and success from His presence.

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Chapter Three

Politics during the Era of the Rightly Guided Caliphs

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First Chapter

Shari'ah Politics in the Caliphate of Abu Bakr as-Siddiq

During the era of the Khulafa-e-Rashidun (Rightly Guided Caliphs), the scope of Shari'ah politics was extremely vast. The Caliphs ruled over immense territories and grand cities, managing a state that spanned horizons. For such governance, requirements such as military management, distribution of grants, judicial administration, concluding peace and war treaties, sending envoys, and other general political matters were necessary. These were part of the political responsibilities assigned to the ruler, and these political activities provided fertile ground for Shari'ah politics.

However, in describing Shari'ah politics during the era of the Khulafa-e-Rashidun, we will limit ourselves only to those matters that consider Shari'ah politics as a theoretical perspective and an ijtihadi (interpretive) process for managing political affairs—through which human welfare is achieved and which does not conflict with Shari'ah evidence. This reveals the working methods of the Khulafa-e-Rashidun to the public, showing how they worked for public welfare without any conflict with Shari'ah evidence.

The Caliphate of the Khulafa-e-Rashidun was a unique period in Muslim history. The rulers were the greatest companions of the Messenger of Allah (peace be upon him). They embodied a wonderful combination of knowledge and action, strength and integrity, and piety and steadfastness, and they implemented the finest examples of justice in human governance.

From a jurisprudential (fiqhi) perspective, their ijtihad holds special significance. The status of the companions' words and stances, along with their roles as leaders (imams) of the Muslims, made their political ijtihads well-known. Through this, it is possible to understand their consensus with other companions. Therefore, if no opposition to these principles is known, it will be considered as 'silent consensus' (ijma' sukuti), through which a particular opinion has gained prominence.

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The companions; and no differing opinion has been narrated from others that would contradict the evidence of consensus with them. This further strengthens the acceptability of these ijtihads as evidence.

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We will mention several of the most famous political rulings prevalent during the era of each Caliph. We will begin with the Caliph of the Messenger of Allah (peace and blessings of Allah be upon him), Abu Bakr as-Siddiq (may Allah be pleased with him). Among the political rulings of his era are:

(1) War against the apostates:

After Abu Bakr (may Allah be pleased with him) assumed the Caliphate, he faced the situation of apostasy (leaving the religion) that occurred after the passing of the Prophet (peace and blessings of Allah be upon him). He made a great political decision by taking the initiative to wage war to suppress this fitna (turmoil). It was an extremely difficult situation, but Allah granted this Rightly Guided Caliph the strength and guidance to make that decision, and through it, Allah protected the Muslim Ummah.

It can be said here that: Waging war against a group that refuses to fulfill Sharia rulings—such as those who refuse to pay Zakat—is a matter of consensus among Muslims (1); therefore, it is among those certain matters that are not considered part of 'Siyasa Shar'iyyah' (Islamic politics/discretionary policy).

The answer is: The discussion here is not about the Fiqh (jurisprudential) ruling on fighting against apostates or those who deny Sharia rulings; rather, the discussion is about applying that ruling to a specific event. This involves the application of a Sharia ruling that requires political and administrative steps. Additionally, ensuring the capability to fight against them and considering the aspects of benefit and harm in this case are also necessary, all of which are political aspects.

(2) Collection of the Mushaf (Quran):

Narrated from Zayd ibn Thabit (may Allah be pleased with him), he said: After the martyrdom of the companions in the Battle of Yamama, Abu Bakr (may Allah be pleased with him) sent for me while Umar (may Allah be pleased with him) was present with him. Abu Bakr (may Allah be pleased with him) said: "Umar came to me and said, 'The number of casualties in the Battle of Yamama has increased greatly, and I fear that if the martyrdom of the Qaris (memorizers of the Quran) continues to increase in various battlefields in this way, much of the Quran may be lost, unless you collect it.'"

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(1) A group of scholars have reported consensus (Ijma) on this matter; among them are: Ibn Battal in 'Sharh Sahih al-Bukhari' (8/577), al-Jassas in 'Ahkam al-Quran' (1/571), Ibn al-Arabi in 'Ahkam al-Quran' (2/94), and Ibn Taymiyyah in 'Majmu' al-Fatawa' (28/356).

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"...and I definitely think you should compile the Quran." Abu Bakr said: I told Umar, "How can I do something that the Messenger of Allah (peace and blessings of Allah be upon him) did not do?" Umar said, "By Allah, this is beneficial." Umar kept urging me regarding this matter until Allah expanded my heart for it, and I realized what Umar had realized. Zayd ibn Thabit said: Umar was sitting with him at that time but was not saying anything. Abu Bakr said: "Indeed, you are a wise young man, and we have no doubt about you. You used to write the Revelation (Wahi) for the Messenger of Allah (peace and blessings of Allah be upon him). Therefore, search for the Quran and compile it." By Allah, if he...

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"...If he had assigned me the task of moving one of the mountains, it would not have seemed heavier to me than the command to compile the Quran (1)."

This step regarding the preservation of the Quran was not determined by any explicit text (Nass). Some might think that this was contrary to the Sunnah of the Prophet (peace be upon him), as he did not compile it himself. However, that is not the case; the Prophet (peace be upon him) abstained from doing so only because there was no necessity for it at that time. This was because the revelation of the Quran was still ongoing, and some verses were being abrogated (Mansukh).

Furthermore, there was no fear of it being forgotten in the presence of the Prophet (peace be upon him) (2).

Therefore, the Prophet's (peace be upon him) abstention from this was not something intentional or something that must be strictly adhered to. For this reason, when public interest was ensured through it, Abu Bakr compiled it. Thus, this is a clear Shariah principle (Siyasa Shari'iyyah).

(3) The Appointment of Umar ibn al-Khattab as Successor:

This was a political move undertaken by Abu Bakr due to the fear of division and discord. The Prophet (peace be upon him) did not do this, but it is not prohibited. Abu Bakr consulted on this matter and exercised Ijtihad in selecting the person he deemed the best among this Ummah and most suitable for this Caliphate. He made the right decision in this regard and provided sincere counsel.

The scholars have reached a consensus on the legitimacy of appointing a successor (Istikhlaf) (3). And the Bay'ah, or oath of allegiance, is completed through the Bay'ah of the 'Ahl al-Hall wal-Aqd' (the decision-makers). Although they have differed regarding the impact of this appointment—whether it is binding upon the 'Ahl al-Hall wal-Aqd'...

(1) Narrated by al-Bukhari (4679).
(2) See: Al-Burhan fi 'Ulum al-Qur'an, al-Zarkashi 1/238; Al-Itqan, al-Suyuti 1/202.
(3) See: Al-Ahkam al-Sultaniyyah, al-Mawardi 18; Tamhid al-Awa'il wa Talkhis al-Dala'il, al-Baqillani 504; Rawdat al-Talibin 7/264; Al-Mufhim lima Ashkala min Talkhis Muslim 4/14; Sharh al-Sunnah, al-Baghawi 10/84.

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...as is the position of the majority (Jumhur) (1), or whether it is merely a proposal that is not

binding (2).

(1) See: Mughni al-Muhtaj 4/131, Kashshaf al-Qina' 5/3062, Hashiyah Ibn Abidin 2/283, Bulghat al-Salik 3/442.

(2) Ad-Dakhira 10/27, Al-Hawi al-Kabir 8/340, Al-Ahkam as-Sultaniyyah, Abu Ya'la 25.

Second Chapter

The Shariah-based Politics (As-Siyasa ash-Shar’iyyah) during the Caliphate of Umar ibn al-Khattab

The political administration of Umar ibn al-Khattab (may Allah be pleased with him) is a unique example of governance, where he successfully combined the power of rule, justice, and expert political wisdom with humility, asceticism (detachment from worldly life), and strict justice towards his own self. This combination has turned his politics into a rich treasury of remarkable events and examples in the field of good governance.

This political approach was also characterized by an abundance of public-interest-oriented Ijtihad (independent reasoning), through which this Rightly Guided Caliph set the goal of achieving public interest and preventing harm in the light of Shariah texts (Nusus). Consequently, several instances of Ijtihad were formulated on various matters, serving as a unique model of subtle jurisprudential perspective in balancing the focus on Shariah-recognized public interest and remaining committed

to the boundaries of Shariah.

Among these instances of Ijtihad are:

(1) Taking one-fifth from Salab (the equipment of a slain enemy):

Regarding Salab, or the equipment of a slain enemy, the fundamental principle is established in the Hadith of the Prophet (peace and blessings of Allah be upon him): "Whoever kills someone, his Salab (personal equipment) shall belong to him." Therefore, the Salab belongs to the killer. Salab was not treated like general spoils of war from which one-fifth (Khumus) would be taken; rather, the entire property was given to the killer.

During the era of Umar ibn al-Khattab, Bara ibn Malik engaged in a duel with the Persian commander Marzuban, killed him, and took his Salab. When the value of that Salab reached thirty thousand, the matter was brought to Umar ibn al-Khattab. He then said: "We used not to take one-fifth from the Salab. However, the Salab of Bara has reached a very large amount of wealth; therefore, I deem it appropriate to take one-fifth from it." (1)

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(1) Abdur Razzaq narrated this in his Musannaf (9468), Abu Ubaid in the book 'Al-Amwal' (389), and Bayhaqi in 'As-Sunan' (12787).

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This was an ijtihad based on *maslahah* (public interest) by Umar (may Allah be pleased with him)

in a case where a *nass* (explicit legal text) existed. Therefore, it is essential to dispel this doubt regarding him.

To analyze the point of doubt precisely, we need to review some jurisprudential (*fiqhi*) aspects of this matter.

The noble scholars have mentioned several answers regarding this, which we can summarize as follows:

First Answer: The intent was that whenever he gave someone *tanfil* (an additional reward), he would take a one-fifth share from it. And when he did not take a one-fifth share, he would not provide it as *tanfil*. Imam Tahawi states:

(Umar, may Allah be pleased with him, reported that they did not take a one-fifth share from *salab* [personal belongings of a slain enemy], even though they had the right to take a one-fifth share from it. Their waiving of this one-fifth was merely an act of relinquishing it; it was not because the *salab* was predetermined for the slayers in the same way that shares of the spoils are predetermined for them). (1)

However, there is some degree of far-fetchedness in this explanation. This is because the outward nature of Umar's (may Allah be pleased with him) actions indicates that there was no provision for taking a one-fifth share in the case of providing *tanfil* or additional rewards; it was not the case that the one-fifth was not taken because additional rewards were not given.

Second Answer: According to the opinion of some jurists, one-fifth must be taken even from *salab* (2). Thus, it can be said that Umar (may Allah be pleased with him) took one-fifth from something that was inherently eligible for a one-fifth deduction according to the original rulings of Sharia.

However, the objection to this answer is the first part of the narration (*athar*), which states that Umar (may Allah be pleased with him) did not take one-fifth from *salab*. Consequently, this answer

is not appropriate.

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(1) Sharh Ma'ani al-Athar 3/231.

(2) Jurists have differed regarding the method of distributing *salab*. Some have said: It is part of the basic spoils (*ghanimah*) and one-fifth is not taken from it—this is the opinion of the Shafi'i and Hanbali schools. Some have said: It is part of the one-fifth itself, not the spoils—this is the opinion of the Maliki school; and accordingly, it is not possible to take another one-fifth from it because it is not part of the spoils. Others have said: It is part of the remaining spoils after the one-fifth has been removed—this is the opinion of the Hanafi school. See: Al-Hidayah 2/391, Al-Bahr al-Ra'iq 5/99, Sharh Mukhtasar Khalil (by al-Kharashi) 3/129, Al-Fawakih al-Dawani 1/406, Al-Hawi al-Kabir 8/396-397, Bahr al-Madhhab 6/233-234, Al-Mughni 9/237.

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Third Answer: Not acting upon this report (Athar). In this case, priority will be given to the explicit text (Nass) of the Messenger of Allah (SAW) over the legal reasoning (Ijtihad) of Umar (RA). This Hadith indicates that in this instance, a one-fifth share (Khums) will not be taken, and the evidence is the saying of the Prophet (SAW) (1).

Furthermore, this report contradicts the narration which mentions that Sa'd ibn Abi Waqqas (RA) gave an individual twelve thousand (currency units) as a bonus (Nafl) on the day of the Battle of

Qadisiyyah, which was even more than the aforementioned amount (2).

Fourth Answer: He (Umar RA) was of the opinion that the provision of not taking one-fifth applies only to ordinary property, not to extremely valuable or excessive wealth. If the leader (Imam) deems the wealth to be excessive, he may take one-fifth from it. This is the school of thought (Madhhab) of Ishaq (Rah.) (3).

Evidence for this can be provided as follows: this particular situation is not included in the primary objective of the Hadith. Moreover, it is not appropriate to apply a general ruling to unusual and rare occurrences.

The primary purpose of the Hadith is to encourage warriors in battle to defeat the enemy. This is achieved only with ordinary property, which ensures personal benefit without causing loss to the community. However, the matter of excessive wealth is the opposite. Furthermore, the Hadith pertains to ordinary soldiers and what they typically carry. It does not relate to any exceptionally expensive items or the attire worn by their leaders. The general meaning of the Hadith cannot be applied to such a rare circumstance. For this reason, some jurists have not included the armor and crown worn by polytheist leaders in this 'Salab' (spoils of war taken from a killed enemy); based on the logic that it is not an ordinary matter (4).

Therefore, a small amount of wealth will be given as a bonus. However, if the wealth exceeds this limit, it will fall under the category of 'Ghanimah' (general spoils of war) (5).

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(1) See: Al-Amwal, Abu Ubaid 393; Al-Mughni 9/237.
(2) See: Al-Umm 4/150; Ma'rifatus Sunan wal Athar 9/227.
(3) See: Al-Mughni 9/237; and see: Masailul Imam Ahmad ibn Hanbal wa Ishaq ibn Rahwaihi lil Kawasaj 2/243.
(4) See: At-Taj wal Iklil 4/572; Hashiyatul Adawi ala Kifayatit Talib 2/16; Al-Fawakih ad-Dawani 1/405.

(5) See: Manhaj Umar fi Tashri', Muhammad al-Baltaji 212.

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Thus, we encounter several perspectives regarding the explanation of Umar's (Radiyallahu Anhu) position (1): it may be viewed as outside of Sharia-compliant policy (Siyasah Shar'iyyah) because it is seen as an application against a Sharia ruling or contrary to the explicit text (Nass). Conversely, it can also be seen as Sharia-compliant policy if it is considered an exercise of legal reasoning (Ijtihad) for the public welfare that does not contradict the explicit text.

(2) Prohibition regarding marrying women from the People of the Book:

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Almighty Allah has made it lawful to marry women of the People of the Book in His word: "This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them. And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you." [Al-Ma'idah: 5]

Several companions married women of the People of the Book, such as Hudhayfah ibn al-Yaman, Talhah ibn Ubaydullah, Al-Jarud ibn Mu'alla, and 'Uyaynah al-Abdi; each of them married a woman from the People of the Book (2).

However, it is narrated that Umar (may Allah be pleased with him) forbade the companions from these marriages. Among the narrations revealing the reason for this prohibition are:

Narrated from Qatadah that Hudhayfah married a Jewish woman during the time of Umar. Then

Umar said: "Divorce her, for she is a burning coal." He (Hudhayfah) asked: "Is it forbidden?" He (Umar) replied: "No." Consequently, Hudhayfah did not divorce her because of his (Umar's) words, but rather divorced her later (3).

(1) Regarding the answer, we can further add that: granting **tanfil** (additional rewards) is associated with the permission of the Imam; it is not an obligatory right according to the fundamental rulings of Shari'ah. Based on this, just as a ruler can grant **tanfil** conditionally from the beginning, he can also grant it conditionally after deducting the **khumus** (one-fifth). This answer is correct according to the view of those who believe that granting **tanfil** through **salab** (possessions of the deceased) is at the Imam's discretion and is not a Shari'ah-mandated right; they are the Hanafis and Malikis. This is consistent with the view of those who believe that **tanfil** should be granted from the **khumus**, not from the main portion of the spoils; they are the Malikis. Therefore, this answer might only be correct according to the Maliki school, but the complication here is that Umar did not do it afterward, so there was no prior condition.
(2) See: Masa'il al-Imam Ahmad, Riwayat Salih 2/320, and see: An-Nasikh wal-Mansukh, Abu Ubayd 87-88, Ahkam al-Qur'an, al-Jassas 1/403.
(3) This was narrated by Abdur Razzaq (10057).

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Narrated from Sa'id ibn al-Musayyib that Umar ibn al-Khattab wrote to Hudhayfah ibn al-Yaman—while he was in Kufa and had married a woman from the People of the Book—saying: "Separate from her. For you are in the land of the Magians (fire-worshippers). And I fear that some ignorant person will say: 'A companion of the Messenger of Allah (peace and blessings of Allah be upon him) has married a disbelieving woman,' and they will remain ignorant of the allowance granted by Allah, leading them to start marrying Magian women. Therefore, separate from her." (1)

In another narration from Ibn Sirin, it is reported that Hudhayfah had married a Jewish woman.

Umar spoke to him regarding this. He (Hudhayfah) asked: "Is it forbidden?" Umar replied: "No, but you are a leader of the Muslims, so separate from her." (2)

In another narration, it is said that Umar wrote to him: "I strongly urge you not to put down this letter of mine from your hand until you have released (divorced) her. For I fear that the Muslims will follow your example and prioritize Dhimmi women because of their beauty; and that is sufficient as a **fitna** (trial) for the Muslims." (3)

Narrated from Shaqiq, he said: When Hudhayfah married a Jewish woman, Umar wrote to him telling him to divorce her. Hudhayfah wrote back to him: "If it is forbidden (haram), then I will divorce her." Umar wrote back to him: "I am not claiming that it is forbidden, but I fear that you will become attracted to the immoral women among them."
(4)

Narrated from Sa'id ibn Jubayr, he said: After Umar ibn al-Khattab appointed Hudhayfah as the governor of Madain and after the number of Muslim women increased (there), he sent a message to him: "News has reached me that you have married a woman from the People of the Book among the people of Madain; divorce her." Hudhayfah wrote back to him: "I will not do so until you tell me whether this is permissible (halal) or forbidden (haram), and what is your intention behind this?" Umar wrote back to him: "No (it is not forbidden), rather it is permissible. However, there is a certain charm in non-Arab women; if you incline towards them, they will gain precedence over your (Muslim) women." (5)

(1) Abdur Razzaq, Al-Musannaf, number: 12676.
(2) Sa'id bin Mansur, Sunan, 1/225.

(3) Al-Athar, Muhammad bin Hasan, 1/394, number: 412.

(4) Ibn Abi Shaybah, Al-Musannaf, number: 16163; Sa'id bin Mansur, Sunan, number: 716; Bayhaqi, As-Sunan, number: 14361. Ibn Kathir says in his 'Tafsirul Qur'anil Azim' (1/583): Its chain of narration is authentic (sahih).

(5) Tabari, Tarikh, 3/588.

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How will this ijtihad (legal reasoning) be explained?

The scholars have differed on this matter in several ways:

First way: Those who believe that Umar (may Allah be pleased with him) considered marrying women from the People of the Book to be forbidden, which was contrary to the opinion of the majority of the Sahaba. In support of this, they present as evidence the report stating that Talha bin Ubaydullah married a Jewish woman and Hudhayfah bin Yaman married a Christian woman. At this, Umar bin al-Khattab (may Allah be pleased with him) became very angry, even to the point of being ready to attack them. Then they both said: O Commander of the Faithful, we are divorcing them, do not be angry! Then he said: If it was valid to divorce them, then it was also valid to marry them. (1)

However, this is a weak narration. A more authentic narration regarding the permissibility of marriage has been reported from Umar (may Allah be pleased with him). (2)

Therefore, this way is not correct. Rather, Umar's school of thought on this matter was similar to that of the majority of the Sahaba and the jurists of various regions after them; (3) the disagreement on this matter is only well-known from Ibn Umar (may Allah be pleased with them both). (4)

(1) At-Tabari narrated this in his Tafsir, 4/364-365.

(2) See: Tafsir al-Tabari, 4/365; and see: Al-Muharrarul Wajiz, 1/296.

(3) See: Abu Ubaid's An-Nasikh wal Mansukh, pages 84-90; Al-Jami' li Ahkamil Qur'an, 3/68; At-Tabari

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...has described the consensus (Ijma'); see: Tafsir al-Tabari, 4/366; and Jassas states in his work Ahkam al-Qur'an (1/403): "We do not know of anyone among the Companions and the Successors (Tabi'un) who considered marriage with them to be forbidden (haram)." A similar account is present on page 2/205.

(4) As recorded in Sahih al-Bukhari (Hadith No. 5285): When Ibn Umar (may Allah be pleased with both of them) was asked about marrying Christian or Jewish women, he would say: "Allah Almighty has forbidden polytheistic women for the believers. And I do not know of any greater shirk (associating partners with Allah) than for a woman to say her Lord is Jesus—when he is but one of the servants of Allah." Some scholars have interpreted this to mean it is 'makruh' or disliked; for example: Ahkam al-Qur'an, Jassas 1/403; Al-Hawi al-Kabir 9/222. On the other hand, other scholars have interpreted it as forbidden (haram); see: Al-Nasikh wal-Mansukh by An-Nahhas, page 195; Al-Muhalla 13/9; Fath al-Bari 9/417. Ibn al-Mundhir stated: "It is not authentically proven from anyone in the early generations that this is haram." See: Al-Ishraf 5/93. It is narrated from Ata that he disliked it and said: "At that time, the number of Muslim women was small." This was mentioned by Ibn Abi Shaybah in his Musannaf (Hadith No. 16164). Ibn Hajar classified its chain of narration as 'hasan' (good) and said: "Its meaning is that he restricted this permissibility to a specific circumstance." See: Fath al-Bari 9/417.

Second Method: Umar (RA) did not forbid marrying them; rather, it was considered better to avoid, or categorized under the level of seeking purity and being disliked, not reaching the level of being forbidden (haram) (1).

For this reason, Muhammad bin al-Hasan mentioned Umar (RA)'s prohibition and said in that context: (We adopt this view; we do not consider it haram, but we believe that Muslim women should be chosen instead of them, and this is the position of Abu Hanifa) (2).

Therefore, Umar (RA) had forbidden Hudhayfah because the condition of chastity was imposed in the verse, yet there was no certainty regarding this woman's chastity (3).

Al-Muhasibi says: (The Ummah has always maintained a consensus on the matter that marrying women from the People of the Book is permissible (halal); however, Ibn Umar used to dislike it. Umar and others also disliked it without declaring it haram, out of fear that a Dhimmi woman might not be chaste) (4).

According to this method, no doubt remains, because marrying a Muslim woman is far better than marrying a woman from the People of the Book (Kitabiyya). And the permissibility of marrying them does not negate 'Makruh al-Tanzihi' or general dislike; this is the school of thought (madhhab) of the majority of jurists (Fuqaha) regarding the primary ruling on marrying Kitabiyya women (5).

(1) See: Tafsir al-Tabari 4/366; An-Nasikh wal-Mansukh, Abu Ubayd 90; Sharh Sahih al-Bukhari, Ibn Battal 7/434; Ahkam al-Qur'an, Jassas 1/403; At-Tamhid, Ibn Abdil-Barr 2/131-132; Al-Mughni 7/500; Ahkamu Ahli-dh-Dhimmah 2/795-796; At-Taj wal-Iklil 5/133-134.
(2) Al-Athar, Muhammad bin al-Hasan 1/395.
(3) See: An-Nasikh wal-Mansukh, Abu Ubayd 91.
(4) Fahm al-Qur'an wa Ma'anihi 229.
(5) The majority of Hanafi, Maliki, and Shafi'i jurists have held the view that marrying a Dhimmi

Kitabiyya woman is disliked (makruh). Ibn al-Qasim called it simply permissible, which is one view of the Shafi'is. In the Hanbali school of thought, it is mentioned as better to avoid.

...has been made. And regarding the legal ruling for Harbi Kitabiyah women (non-Muslim women from the People of the Book) residing in the land of war (Dar al-Harb), those who dislike marrying Dhimmi women dislike it even more strongly in the case of Harbi women. For this reason, the Hanafis have given an opinion akin to prohibition (haram) in this case. See: Al-Bahr al-Raiq 3/111; Hashiya Ibn Abidin 3/45; Mughni al-Muhtaj 4/311; Rawdat al-Talibin 7/135; At-Taj wal-Iklil 5/134; Sharh Mukhtasar al-Khalil, al-Kharashi 3/226; Bulghat al-Salik 2/271; Al-Mughni 7/500; Al-Mubdi 6/139; Al-Insaf 8/135.

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Third Path: This was a prohibition regarding this marriage from the perspective of Sharia-based policy (Siyasah Shar'iyyah), which is the opinion of many contemporary scholars (1).

This opinion is widely popular among contemporaries; however, I have not seen any of the earlier jurists (fuqaha) mention this. Imam Tabari has mentioned that there is no meaning in talking about separation, because it is contrary to the collective position of the Ummah (2).

Some contemporary scholars have criticized this path and said that it is not a reliable path. No mention of such a prohibition has been narrated from Umar (RA); rather, it amounts to imposing an illegal restriction on matters that are inherently permissible (mubah) (3).

According to the explanation of the contemporaries, it can be regarded as a public interest-oriented ijtihad (Maslahi Ijtihad) under the scope of Sharia-based policy (Siyasah Shar'iyyah), the purpose of which was to prevent the harms resulting from such marriages. From the sum of the previous descriptions, we can summarize these influential reasons:

First Reason: The fear of marriage with sinful or adulterous women among them. Because, in the verse, the condition of chastity was imposed; as a result, Umar (RA) feared that in the then circumstances, this condition might not be implemented.

(1) See: Ta'lil al-Ahkam, Muhammad Shalabi 44; Manhaj Umar fit-Tashri' 304-306; Nazariyat al-Ibaha 'indal Fuqaha wal-Usuliyyin, Muhammad Madkur 348; Nazariyat al-Maslaha fil-Fiqh al-Islami, Hussain Hamid Hassan 229; At-Ta'assuf fi Isti'mal al-Haqq, Ad-Darini 162-163; As-Siyasah ash-Shar'iyyah fi al-Ahwal ash-Shakhsiyyah, Abdul Fattah Amr 52-53; Al-Madkhal ila Siyasah ash-Shar'iyyah wal-Anzimah al-Mar'iyyah 349; As-Siyasah ash-Shar'iyyah, Abdullah al-Qadi 103; Ijtihadat Umar bin al-Khattab, Khalid Muhammad Abdul Wahid Hanafi 171; Al-Ijtihad al-Usuli 'inda Amir al-Mu'minin Umar bin al-Khattab, Muhammad Fuad 344-345; Al-Maslahah al-Ammah min Manzur Islami, Fawzi Khalil 583; Maqasid ash-Shari'ah fi Takhsis an-Nass bil-Maslaha, Ayman al-Ayyubi 236; Taghayyur al-Zuruf wa Atharuhu fi Ikhtilaf al-Ahkam, Linmansi 468-469; Asl I'tibar al-Ma'al, Umar Jadiya 430; Istithmar an-Nass ash-Shar'i baynal Zahiriyyah wal Maqasidiyyah, Ahmed Jeeb 201-202; Taq'id al-Mubah, Husain al-Mus 212; I'tibar al-Ma'alat wa Mura'at at-Tasarrufat, Sinusi 166; As-Siyasah ash-Shar'iyyah wa Atharuha fi Hukm at-Taklifi 455; As-Siyasah ash-Shar'iyyah, Akram Kassab 144.
(2) See: Tafsir at-Tabari 4/336.
(3) See: Manhajiyat Umar fil Ijtihad ma'an Nass, Muhammad at-Tawil 165-166.

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Second Reason: Since those who married, such as Hudhayfah and Talhah, were leaders and prominent figures among the people and personalities who are followed (1). Therefore, a permissible matter was prohibited for the common people out of fear that some harm might result from it.

Some contemporary researchers have explained this ban on the marriage of leaders in light of the sensitivity of their political positions and the fear of leaking state secrets or the fear of exerting influence on them to adopt a specific policy that is not consistent with the state's interests (2).

However, this is a remote possibility. Rather, the more likely view is that these great individuals were role models for the people, and this is clearly mentioned in some narrations. It is not correct to compare the situation of that time with the restrictions imposed in the present era on marrying foreign women, considering the sensitivity of the positions of military or political leaders. This is because the situations are different. Otherwise, what kind of secrets could there be that one would fear being leaked to dhimmi wives?! Whereas, in reality, they were subjects of the Islamic state itself, not foreigners or outsiders.

Third Reason: This may have been done out of the fear that, due to people's ignorance and the early period of embracing Islam, they might consider it permissible to marry polytheist women (3).

Fourth Reason: This was done out of the fear of creating a dislike or aversion towards Muslim women (4).

Therefore, this was done with a view to the greater good; especially if the number of Muslim women is low in a particular place, then for the sake of the greater good, one can be restrained from a permissible matter in an exceptional situation.

(1) See: Tafsir al-Tabari 4/366.

(2) See: Al-Siyasah al-Shar'iyyah fil Ahwal al-Shakhsiyyah 55; Al-Ijtihad al-Usuli 'inda Amir al-Mu'minin 'Umar ibn al-Khattab, Author: Muhammad Fuad Zahir 341.

(3) See: Al-Tamhid, Ibn Abd al-Barr 2/131-132; the opinion of Ibn Abd al-Barr was mentioned earlier that this decision of Umar (RA) fell under the category of being disliked.

(4) See: Tafsir al-Tabari 4/366. It appears from Tabari's narrative style that he used this term in the sense of being disliked or avoidable. However, the purpose of mentioning it here is that this could be a reason upon which a prohibition can be based.

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Whether these meanings are all correct or partial, the main purpose was that this prohibition by Umar (may Allah be pleased with him) was related to a specific and partial situation. He feared that strife or harm might arise from a permissible matter; therefore, for the purpose of blocking the path to the forbidden (Sadd al-Dhara'i), he limited this permissible matter due to some incidental reason.

Fifth reason: Fear of being influenced by the religion of the women of the People of the Book, or the fear of leaning towards them, or the fear of its effect on children and family.

But this is not correct, and it would not be right to apply Umar's (may Allah be pleased with him) legal reasoning (ijtihad) to this meaning. Because this factor was already present within the original Sharia ruling itself which made marriage with them permissible. Since the women of the

People of the Book can influence their husbands and exert influence on children as well, yet permission was granted; because the benefit (Maslahat) gained through it was greater.

Therefore, it would not be correct to say that Umar (may Allah be pleased with him) prohibited them solely due to these harms. Because this is such a legal reasoning that invalidates the basic foundation of permissibility. Therefore, if it is said that Umar (may Allah be pleased with him) compelled them to give a divorce or prohibited them from marrying, there must have been a special and exceptional reason behind it which ensures some acceptable benefit from the perspective of Sharia. It will not invalidate the original Sharia ruling, but rather, based on some acceptable benefit due to differences in time or place, it can qualify the subject of the prohibition.

As an example, the matter of prohibition in the case of marriage in our current age can be mentioned. Because these marriages take place in such states where the laws do not follow the provisions of Islam, resulting in an adverse effect on children. In this case, this legal reasoning is correct, because it is such a powerful characteristic that was not present at the time of the original permissibility. Because the original permissibility was related to marriage with women of the People of the Book under the laws of Islam. Similarly, in our contemporary context, the talk of prohibition can be said because the condition of chastity (Iffat) has not been achieved; therefore, it is a condition to ensure this before marriage. But providing a prohibition by citing a reason like fear over the religion is such a legal reasoning that invalidates the original foundation of Sharia permissibility, so it is not correct.

(3) Implementing three divorces:

It is narrated from Tawus that Abu al-Sahba said to Ibn Abbas (may Allah be pleased with them): (From your special knowledge, tell us something, was divorce not...)

...during the era of the Messenger of Allah (PBUH) and Abu Bakr (may Allah be pleased with him), were three divorces counted as one divorce? He said: Yes, it was like that. Subsequently, when the reign of Umar (may Allah be pleased with him) came, people became involved in giving continuous divorces; consequently, he implemented it upon them (1).

Another narration states: Abu Sahba said to Ibn Abbas (may Allah be pleased with him), "Do you know that during the time of the Prophet (peace be upon him), Abu Bakr (may Allah be pleased with him), and the first three years of Umar's (may Allah be pleased with him) caliphate, three divorces were counted as one?" Ibn Abbas replied, "Yes!"

A question arises here: How was it permissible for Umar ibn al-Khattab (may Allah be pleased with him) to perform ijtihad to change the Sharia limit of divorce and treat three divorces [pronounced at once] as three?

Before answering this, it is necessary to know the ruling on pronouncing three divorces at once; will it be counted as one divorce or three?

The honorable Ulama are divided into two opinions on this matter:

First opinion: Three divorces will be effective as three. This is the collective opinion of all the Imams of the four schools of thought (2), and some have described it as a consensus (Ijma) (3).

According to this view, there was no political ijtihad in this action of Umar (may Allah be pleased with him); rather, he implemented it according to the Sharia ruling for three divorces.

They have presented several pieces of evidence in support of this, among which a primary one is:

the consensus of the Sahaba (Companions) on this ruling and their approval of what Umar (may Allah be pleased with him) did. And this is an independent and sufficient proof (4).

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(1) Muslim narrated it, Hadith number (1472).

(2) See: Al-Bahr al-Ra'iq 3/257, Sharh Mukhtasar Ibn al-Hajib 4/314 with Tawdih, Al-Hawi al-Kabir 10/118, Al-Mughni 10/334, and see: Al-Muhalla 9/364.

(3) See: Al-Ishraf, Ibn al-Mundhir 5/190, Ahkam al-Quran, Jassas 1/469, Ahkam al-Quran, Ibn al-Arabi 1/269; and for a refutation of the claim of consensus by Ibn Taymiyyah, see: Majmu' al-Fatawa 33/91.

(4) See: Sharh Ma'ani al-Athar 3/55.

Regarding the hadith of Abu As-Sahba narrated from Ibn Abbas, they have provided answers from four perspectives:

Firstly: This narration is considered 'Shadh' (irregular or anomalous). A contrary narration has been authentically proven from Ibn Abbas. Furthermore, he himself issued fatwas contrary to it. Therefore, that which is stronger shall be given precedence over it (1).

Secondly: It being abrogated (Naskh). This is because Ibn Abbas himself used to act contrary to this narration; and he would not have acted contrary to it had he not been aware of any abrogating factor (2).

Thirdly: This was not a command from the Prophet (peace and blessings of Allah be upon him), and having become aware of this, he also [gave] silent approval...

...did not provide (3).

Fourthly: Interpreting the Hadith beyond its literal meaning and accepting it in such a way that it does not prove that three divorces at once will be counted as one divorce—as it might appear on the surface. They have mentioned several explanations regarding this (4).

Second Opinion: Three divorces given at once will be counted as one divorce. This is the opinion of a group of Tabi'un (5). Additionally, Ishaq (6), Dawud az-Zahiri (7), and Shaykh al-Islam Ibn Taymiyyah have supported this view (8).

(1) See: At-Tamhid, Ibn Abd al-Barr 15/234-235; Imam Ahmad considered this narration as 'Shadh' (irregular). See: Sharh 'Ilal al-Tirmidhi 2/625; Ibn Qudamah in 'Al-Mughni' 10/334 narrates from Al-Athram that he said: I asked Abu Abdullah (Imam Ahmad) about the Hadith of Ibn Abbas that during the time of the Prophet (peace be upon him), Abu Bakr, and Umar (RA), three divorces were treated as one divorce. How do you refute this? He said: By the narrations of people from Ibn Abbas to the contrary. Then he mentioned many narrations from Ibn Abbas which are contrary to it. Also see: Ikhtilaf al-Fuqaha, Al-Marwazi 246; Masa'il al-Imam Ahmad wa Ishaq, Al-Kawsaj 4/1770; Al-Jami' li-Ulum al-Imam Ahmad 15/68.

(2) This is the opinion of Imam Shafi'i. See: Ma'rifatus Sunan wal-Athar 11/38.

(3) See: Al-Muhalla 9/390-391; Ma'rifatus Sunan wal-Athar 11/42.

(4) To see these explanations, see: Ma'rifatus Sunan wal-Athar 11/39; Al-Mu'lim bi-Fawa'id Muslim, Al-Maziri 2/193; Al-Mughni 10/335; Fath al-Bari 9/363-364.

(5) See: Ikhtilaf al-Fuqaha, Al-Marwazi 246; Al-Mughni 10/334; Fath al-Bari 9/362.

(6) See: Ikhtilaf al-Fuqaha, Al-Marwazi 246.

(7) See: I'lam al-Muwaqqi'in 3/34.

(8) This opinion is attributed to a group of Sahaba, Tabi'un, and their successors, and to a group of jurists (Fuqaha).

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This problem arises for those who believe that if three divorces are given at once, it is counted as one divorce; which potentially falls under administrative Ijtihad for public welfare (Siyasah Maslahiyyah). However, what was the administrative or policy aspect in the action of Umar (RA)?

The answer is that it can be applied to any one of three explanations or methods:

First explanation: This is a punitive penalty (Ta'zir) imposed on the people by a just ruler in light of Sharia administrative policy (Siyasah Shar'iyyah), so that they are compelled to preserve the rights of the Legislator (Shari'). For they were negligent in following the mandatory Sharia provisions regarding divorce, even though they were aware of them.

Therefore, this is a punishment that is applied only when necessary.

Based on this, it is established that if people are ignorant of this provision or have a different explanation regarding it, then they will not be punished. Ibn Taymiyyah said: "If this was the primary basis for this step taken by Umar (RA)..."

...remains, then it can be said: those who were aware of its prohibition and did it despite knowing, and repeated it more frequently after learning of the prohibition—in such a situation, if someone applies this ruling (treating three divorces as three) upon them, then in that case, they followed Umar (RA) and the companions who agreed with him. On the other hand, a person who did not know about its prohibition or did it believing it to be permissible is not deserving of punishment, and it is not possible to force them to adhere to this ruling as a penalty until the Legislator Himself makes three divorces mandatory or effective.

Second Explanation: Or they believe that divorce would take effect as a single divorce when Muslims issued it rarely. But when its frequency increased, no further leniency or opportunity remained. Based on this, it will no longer be considered a permanent or mandatory Shariah ruling.

= The school of thought (Madhhab) of Imam Malik, Abu Hanifa, and Ahmad (may Allah have mercy on them). See: Majmu' al-Fatawa 33/81-83, I'lam al-Muwaqqi'in 3/33-34.
(1) See: Jami' al-Masail 1/323, Majmu' al-Fatawa 32/312 and 33/87, I'lam al-Muwaqqi'in 3/35. And this appears to be the more acceptable opinion to the Shaykh, see: Majmu' al-Fatawa 33/91-92.
(2) See: Majmu' al-Fatawa 33/88.
(3) See: Jami' al-Masail 1/323.
(4) See: Majmu' al-Fatawa 33/88.

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Third Aspect: It can be said that these matters are within the scope of acceptable and possible differences of opinion (1). Consequently, the just Imam has adopted an acceptable opinion in consideration of a valid interest, and this falls under 'Siyasah Shari'iyyah' (Sharia-based governance/policy).

(4) Suspension of the Punishment for Theft:

It has been narrated from Umar (may Allah be pleased with him) that he suspended the

punishment of cutting off a thief's hand in two instances:

First Instance: The year of famine:

Umar (may Allah be pleased with him) said: "The hand shall not be cut off for stealing clusters of fruit from a tree, nor during a year of famine" (2).

The scholars have consistently mentioned this event, noting that Umar (may Allah be pleased with him) did not cut off the hands of thieves during the year of 'Ramadah' (the severe famine) (3).

Second Instance: In the case of theft by the slaves of Abdur Rahman bin Hatib:

It is narrated from Yahya bin Abdur Rahman bin Hatib that some slaves of his father, Abdur Rahman bin Hatib, stole a camel and slaughtered it. The camel's hide and head were found with them. Subsequently, when their matter was presented to Umar bin Khattab, he ordered their hands to be cut off. After they had been gone for a while, we thought that their hands had already been severed. At that moment, Umar (may Allah be pleased with him) said: "Bring them back to me." Then he addressed Abdur...

...he said to Abdur Rahman: "By Allah! I see that you make them work, yet you keep them hungry and mistreat them. Even if they had found something forbidden by Allah, it would have become lawful for them." Then he said to the owner of the camel: "How much would you have taken in exchange for your camel?" He replied: "Four hundred dirhams." He said to Abdur Rahman: "Get up and pay him a fine of eight hundred dirhams." (4)

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(1) Ibn Taymiyyah has mentioned regarding some jurists—such as his grandfather Abul Barakat Ibn Taymiyyah—that they sometimes gave fatwas (legal rulings) that three divorces pronounced at once were effective, and at other times that they were not. He mentioned as one of the reasons that this was due to differences in their **ijtihad** (independent reasoning). See: **Majmu' al-Fatawa** 33/93. Support for this side of the answer can be drawn from such examples, indicating that Umar's action was the adoption of an acceptable and possible path.

(2) Abdur Razzaq narrated this (18990).

(3) See: **Zad al-Musafir** 3/334, Zurqani's commentary on the **Muwatta** 4/75.

(4) Malik narrated it in the **Muwatta** (4/1083) and Abdur Razzaq narrated it in the **Musannaf** under number 18987.

The reason for suspending the punishment is that a year of famine is a time when people are likely to face severe hardship and hunger. Consequently, a thief is not free from falling into such a need that makes it mandatory for the property owner to provide him with assets, either for free or in exchange. And this is such a strong doubt (**shubha**) that it wards off the **hudd** (prescribed punishment) from him (1).

The jurists have reached a consensus that the hand of a needy thief shall not be amputated during a year of famine (2).

It could be said here: This is included within the jurisprudence (**fiqhi**) rulings, not within political (**siyasi**) matters. Because acquiring knowledge about **hudd** and its conditions is not a matter of public interest politics.

However, the issue here is not a discussion about the ruling on whether or not to implement the **hudd**; rather, it is a specific incident where Umar (RA) exercised **ijtihad** regarding not applying the **hudd** due to the presence of necessity (**darurah**). And in the case of this specific incident, it calls for **ijtihad**, just as judging it as falling under the category of 'necessity' or special need during a general famine also calls for **ijtihad**.

And this policy is more evident in the story of 'Amur al-Ramadah' (the Year of Famine) than in the story of the slaves of Ibn Hatib. Because this was a special case where the reason for necessity (**manat**) was verified in a judicial context, which is contrary to that general political occurrence.

Based on this story, some contemporary thinkers have held the view that the punishment for theft should only be implemented in a society where a minimum level of solvency or standard of living exists.

And this is not a jurisprudential method, and it has no connection with *Siyasat al-Shar'iyyah* (Sharia-compliant politics). This is because it contradicts definitive textual evidence (*Nass Qat'i*); for the Lawgiver established the penalty without considering this condition. Furthermore, it is almost impossible to know whether this condition has been met. Additionally, it is an undefined characteristic for which no specific amount can be determined to serve as a basis for suspending the ruling. Therefore, it is a condition contrary to evidence, and there is no proof in its favor. It is based on a mere whim and an assumption rooted in arbitrariness.

(1) See: *I'lam al-Muwaqqi'in* 3/17-18.

(2) See: *Al-Bahr al-Ra'iq* 5/58, *Al-Bayan wa al-Tahsil* 16/324, *Rawdat al-Talibin* 10/132, *Al-Iqna'* by

Hijjawi 4/281.

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(5) Suspension of the share of "al-Mu'allafatu Qulubuhum" (those whose hearts are to be reconciled):

One of the political *ijtihads* (legal reasonings) of Umar (RA) was the suspension of the share designated for the "al-Mu'allafatu Qulubuhum" mentioned in the word of Allah Almighty: "Alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled..." [Surah At-Tawbah: 60].

Jurists have differed regarding the ruling on the share for "al-Mu'allafatu Qulubuhum":

First View: This was only for the era of the Prophet (SAW) during the period of Islam's weakness and the necessity for them (1).

They also differed on this matter; some said it falls under abrogation (*naskh*), while others said it falls under the termination of a ruling because the objective or purpose of that ruling has ended (2).

Second View: It is not specific only to the era of the Prophet (SAW), but rather it remains in effect. Those who hold this view are further divided into two perspectives: one group limits "al-Mu'allafatu Qulubuhum" only to those Muslims whose faith is expected to be strengthened or through whom the conversion of others to Islam is expected (3).

Another group considers it general—applying to the Muslim whose faith is expected to be strengthened or through whom others are expected to embrace Islam, and to the disbeliever who is expected to embrace Islam or from whose harm protection is sought (4).

Therefore, according to the first view, the suspension of this share by Umar (RA) was essentially

part of applying a Sharia ruling; because at that time, they no longer had any right to that wealth, so Umar (RA) followed the principle of implementing Sharia law.

(1) This is the Hanafi and Maliki school; see: *Al-Inayah Sharh al-Hidayah* 2/259, *Al-Bayan wa al-Tahsil* 2/359.
(2) See: *Al-Inayah Sharh al-Hidayah* 2/260-261, *Al-Bahr al-Ra'iq* 2/258. Al-Babarti criticized the view of abrogation and said: according to the sound opinion of the school, it is not abrogation.
(3) This is the Shafi'i school; see: *Tuhfat al-Muhtaj* 7/155, *Nihayat al-Muhtaj* 6/156.
(4) This is the Hanbali school; see: *Al-Insaf* 7/232; see further for the evidence and discussion of the two views: *Al-Ahkam al-Fiqhiyyah*.

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What was agreed upon by the Rightly Guided Caliphs, Yasin al-Hashimi 2/706-710.

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And according to this view, the remaining portion depends on the application of this **illah** (legal reasoning or cause). Therefore, Umar (RA) suspended it during his era because this **illah** was not applicable. This falls under **Siyasah Shar'iyyah** (Sharia-compliant governance), as it was a political **ijtihad** (legal reasoning) made with consideration for this **illah** and the **maslahah** (public interest) of the Muslims. (1)

(6) Endowment (Waqf) of Forcibly Conquered Lands:

One of Umar's (RA) political **ijtihads** was his prohibition of distributing conquered lands. Consequently, he did not treat them as spoils of war (**ghanima**); instead, he designated them as a public endowment (**waqf**), from which land tax (**kharaj**) would be collected for the general welfare

of the Muslim community.

The primary motivation behind this **ijtihad** of Umar (RA) was his benevolent concern for the condition of future generations of Muslims. He (RA) stated: "If it were not for the concern for future generations of Muslims, I would not have conquered any settlement without distributing it among its conquerors, as the Prophet (SAW) distributed Khaybar." (2)

Umar ibn al-Khattab (RA) initially consulted the Companions (**Sahabah**) on this matter, and a difference of opinion arose. Some Companions offered him counsel. Mu'adh (RA) said to him—when Umar (RA) intended to distribute the lands among the Muslims: "If you distribute these today, this massive revenue will fall into the hands of the current generation, and after they pass away, it will eventually end up in the hands of a single man or woman. Then, a generation will follow who will be responsible for the defense of Islam, yet they will possess nothing. Therefore, establish a system that remains sufficient for everyone, from the first to the last." (3)

To understand the true nature of this **ijtihad** by Umar (RA), it is necessary to recall the opinions of the jurists (**fuqaha**) regarding the rulings on conquered lands. They are divided into three views on this subject:

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(1) Dr. Abd al-Aal Atwa believes that Umar's (RA) **ijtihad** regarding **Siyasah Shar'iyyah** is based on the first view. This view holds that the ruling was suspended based on the reasoning that this is a type of **ijtihad** that considers the **illah** of the **nass** (textual evidence) and does not contradict it. Conversely, according to the second view, the matter is different. See: **Al-Madkhal ilas-Siyasah ash-Shar'iyyah**, page 88. In my view—and Allah knows best—the matter is the opposite; that is, **Siyasah Shar'iyyah** is more consistent with the second view than the first.

(2) Narrated by al-Bukhari (3125).

(3) Abu Ubayd narrated it in his work **Al-Amwal** (76), and Ibn Zanjawayh in his work **Al-Amwal** (196). See also: al-Bayhaqi’s **As-Sunan al-Kubra** (9/226). For detailed accounts of this

consultation and the resulting differences of opinion, see: Abu Yusuf's **Al-Kharaj** (35-37, 45-46) and al-Bayhaqi's **As-Sunan al-Kubra** (6/517).

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First Opinion: These shall remain as Waqf (permanently preserved). (1)

Second Opinion: The Imam (ruler) has discretion regarding whether to distribute these or keep them as Waqf. (2)

Third Opinion: These shall be distributed. (3)

Therefore, according to the first and second opinions, there is no issue with the Ijtihad (independent legal reasoning) of Umar (may Allah be pleased with him). This is because, according to the first opinion, the primary provision of Sharia is Waqf. Consequently, Umar (may Allah be pleased with him) applied the Sharia provision here; thus, there is no complexity, and it would not fall under Siyasah Shari'iyyah (Sharia-compliant administrative policy).

And according to the second opinion, he was granted the choice or discretion between two valid paths; thereafter, he chose what was more beneficial for the Muslims. As a result, this falls under Siyasah Shari'iyyah.

However, according to the third opinion, his Ijtihad would be contrary to the Nass (unambiguous scriptural evidence), which is a problematic matter. In response, scholars have stated that Umar (may Allah be pleased with him) sought permission from those entitled to the spoils of war

regarding this matter, and they granted him permission. (4)

(7) Taking half of the employees' wealth:

One of the administrative policies of Umar (may Allah be pleased with him) was to take half of the wealth of his employees in various regions:

It is narrated from Ash-Sha'bi (may Allah have mercy on him) that whenever Umar (may Allah be pleased with him) appointed an employee, he would record a list of their assets. (5)

It is narrated from Ibn Umar (may Allah be pleased with them both) that Umar (may Allah be pleased with him) commanded his employees, and they prepared lists of their wealth; among them was Sa'd ibn Abi Waqqas (may Allah be pleased with him). Thereafter, Umar (may Allah be pleased with him) divided their wealth into two parts; he took half and gave the other half to them. (6)

(1) This is the well-known opinion of the Maliki school. See: Al-Bayan wa at-Tahsil 2/539, Jami'ul Ummahat 250.
(2) This is the opinion of the Hanafi and Hanbali schools. See: Al-Inayah Sharh al-Hidayah 5/470, Sharh Muntaha al-Iradat 1/647.
(3) This is the opinion of the Shafi'i school. See: Nihayatul Muhtaj 6/147.
(4) See: Al-Khilafiyyat, Bayhaqi 5/246-247; Rawdatut Talibin 10/275.
(5) Ibn Sa'd narrated this in At-Tabaqat al-Kubra 3/233.
(6) Ibn Sa'd narrated this in At-Tabaqat al-Kubra 3/233 and Abu Ubaid in Al-Amwal (342).

When Umar (RA) appointed Abu Hurayrah as the governor of Bahrain, he divided his wealth. Furthermore, he also divided the wealth of Amr ibn al-As and Muadh ibn Jabal (1). Muhammad ibn Maslamah was the envoy sent by Umar to the officials, and it was he who, by Umar's command, would divide their wealth in half (2).

This incident of dividing wealth is very well-known; scholars have mentioned it repeatedly (3).

The fundamental principle is that a Muslim's property is sacred or inviolable; under such circumstances, what is the basis of political ijtihad in taking an individual's property without their consent?

Answer: Umar (RA) noticed that officials gained certain advantages due to their administrative duties which they would not have gained if they did not hold the responsibility of governance. Therefore, he considered it appropriate to divide these assets with them to ensure the full rights of the Muslims' treasury (Bayt al-Mal) and as part of his advice to the governors.

Ibn Taymiyyah says:

"Similarly, showing special favoritism to officials in transactions such as buying and selling, leasing, mudarabah (partnership), musaqat (irrigation contract), and muzara'ah (sharecropping), etc., is included as a type of gift. For this reason, Umar ibn al-Khattab (RA) divided wealth even with those officials who were highly dignified and pious and against whom there were no allegations of betrayal. He divided the wealth with them only because of the special favor and other benefits granted to them due to their administrative authority. The matter warrants this, because he was a just leader who distributed based on equality. Therefore, when the condition of the leader and the subjects changed, it became obligatory for every person to fulfill their duties to the best of their ability and to avoid what has been forbidden; and one should not make forbidden for himself what Allah has made lawful for him" (4).

(1) See: Ansab al-Ashraf 10/361.

(2) See: Al-Bidaya wa'l-Nihaya 8/30.

(3) See: An-Nawadir wa'l-Ziyadat 3/402, Mukhtasar Ikhtilaf al-Ulama, At-Tahawi 3/177, Siraj al-Muluk, At-Turtushi 143, Nafa'is al-Usul, Al-Qarafi 9/4092-4093.

(4) As-Siyasa ash-Shar'iyya 64-65; see also: Mukhtasar al-Fatawa al-Misriyya 271.

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Al-Qarafi says:

(Extra wealth may come from trade or agriculture, not from gifts. Regarding Abu Hurairah and other Companions, do not consider the gifts as something that must be accepted; nevertheless, taking half of the wealth is better. This is because business is expanded through the influence of office, which results in the status of the Muslims' office being like that of a laborer, and the judge or others being like the owner of the capital. Therefore, to maintain justice between both parties, half of the wealth was given to the laborer.) (1)

Shamma' says:

(Most of Umar (may Allah be pleased with him)'s officials were Companions of the Prophet (peace and blessings of Allah be upon him), and all his governors were righteous; for it is not permissible to assign responsibility to anyone other than a righteous person. Umar (may Allah be pleased with him) was not a person who would do anything illegal; his position was at the peak of piety and justice, and his goodwill was definitively recognized. This being the case, there were no claimants to the wealth in their possession; they did not oppress anyone, and no one complained of being oppressed by them. He did not ask for an account of their wealth, but he (may Allah be pleased

with him) considered the wealth in their hands to be plenty and noticed a surplus exceeding the allowance given to them. The matter became doubtful to him, thinking it might have been earned through the influence of office or other means. Consequently, it was as if two people were in a dispute, or he thought that even if they had increased it through legal means, since the original capital belonged to the public treasury (Baitul Mal), he deemed it appropriate to treat it as a profit-sharing partnership (Mudarabah), just as he had done in the case of his son.) (3)

The essence is that Umar (may Allah be pleased with him) believed the public treasury (Baitul Mal) had a right to all this wealth. This was because the increase in wealth of his governors fell under one of two circumstances:

First circumstance: The influence of administrative power and official status in achieving prosperity in fields such as trade, agriculture, and the like, even if done through legal means. However, this administrative power belongs to the general Muslims, and it created opportunities for them that were not possible before.

(1) Al-Dhakhira 10/81.
(2) The printed text says "Asna" and the correction is taken from the manuscript.
(3) Matali'ut Tammaam 226, and see: Al-I'tisam 2/621, Mawahibul Jalil 4/252.

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Second circumstance: Some portion of this wealth might have been given partially or as gifts, which is subject to doubt, or the requirement of piety (taqwa) is to avoid it. Therefore, Al-Farooq (may Allah be pleased with him), as a precaution, took half of it for the Muslims and left the other half for them.

Therefore, these assets cannot fall outside these two circumstances; because the governors of Umar (may Allah be pleased with him) were righteous Companions, and it is not possible for such

individuals to increase wealth through forbidden (haram) means. Moreover, Umar (may Allah be pleased with him) was extremely strict regarding the accounting of his governors; hence, he showed no leniency in this regard. If any forbidden act were involved in this wealth, he would not have limited himself to taking only half, and from providing punishment...

...would not refrain. (1)

Mu'awiyah (may Allah be pleased with him) followed the policy of Umar (may Allah be pleased with him); therefore, when his death approached, he ordered that half of his wealth be deposited into the Muslim Baytul Mal (Public Treasury). He did this following the conduct of Umar (may Allah be pleased with him) towards his officials and in the hope that it would be a means of attaining purification for himself. (2)

It is noteworthy here that this policy of Umar (may Allah be pleased with him) towards the governors was not created out of any stubbornness or narrow-mindedness, nor was it an arbitrary seizure of their wealth; rather, he considered himself a representative of the Muslim Baytul Mal and of orphans, the poor, and the needy. Therefore, this **ijtihad** (independent legal reasoning) was part of protecting their rights. (Thus, he exercised **ijtihad** for the sake of the Muslims and maintained caution for their sake, just as he had done in the case of his officials when he took half of their wealth as a precaution for the interest of common Muslims). (3) This matter becomes even stronger through this statement: (He would divide half of their wealth only when, after they took charge of administration, such wealth of theirs was revealed that was not known to have belonged to them previously). (4)

Another aspect can be added to this, and that is—it was a condition set even before they took

over the administration.

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(1) Ibn Farhun has mentioned the act of Umar (may Allah be pleased with him) taking half the wealth of his officials as being included under financial penalties. He has considered this among the evidences for the validity of financial penalties (2/293). This is a rare matter, because Umar's (may Allah be pleased with him) governors were righteous, and they did not commit any such offense for which taking half of their wealth would become inevitable. Ibn Farhun, in his book 'At-Turukul Hukamiyyah,' has included it among the proofs for financial penalties following Ibn al-Qayyim's discussion, although Ibn al-Qayyim himself did not mention it among the proofs for financial penalties.

(2) See: An-Nawadir wa'z Ziyadat (3/402), narrated from Imam Malik.

(3) Al-Istidhkār 7/4.

(4) Sirajul Muluk 143.

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A similar example of this method of dividing wealth can be found in the biography of Al-Faruq. It is the incident of Umar ibn al-Khattab’s two sons, Abdullah and Ubaydullah, with Abu Musa al-Ash’ari. When they were passing by Abu Musa al-Ash’ari, the governor of Basra, he provided them with some money from the Baytul Mal as a loan. They bought goods with that money, took them to Medina, and sold them. Afterward, they returned the principal amount to Umar and wanted to keep the profit for themselves. Abu Musa wrote a letter to Umar regarding this matter. Umar (RA) said: "Did he give a loan to everyone in the army in the same way he gave it to both of you?" They replied: "No." Then he ordered them to deposit both the principal and the profit. Ubaydullah objected to this, saying that if that money had incurred a loss, then they would have had to bear the liability. At that point, Umar treated it as **'qirad'** (profit-sharing) and took half of the

profit while giving the other half to them. (1)

Based on this action of Umar, some jurists have further expanded on the matter. According to them, the Imam or head of state regarding officials...

...shall maintain an account of assets; thereafter, he shall fully reclaim whatever remains in excess of their fixed allowances.

(Ibn Habib states: Whatever a governor earns during his tenure beyond his fixed salary or allowance, or whatever a judge gains during his judicial service or an individual in charge of any Muslim affairs obtains, the Imam may collect it from them for the general treasury of the Muslims. When Umar (RA) appointed someone, he would record an account of their assets to monitor the extent of their subsequent increase. For this reason, Umar (RA) used to take half of the officials' wealth when it increased significantly and the additional wealth acquired after the appointment could not be separately identified.) [2]

(8) Strengthening the punishment for drinking alcohol:

Umar (RA) adopted a strict stance regarding the punishment for drinking alcohol and increased the penalty to eighty lashes. He did this after consulting with the noble Companions (Sahaba). As Anas ibn Malik (RA) narrated, when a person who had consumed alcohol was brought before the Prophet (peace and blessings of Allah be upon him), he beat him with two palm branches approximately forty times. He noted that Abu Bakr (RA) had done the same. Later, during the era of Umar, when he consulted with the people, Abdur Rahman (RA) said: "The lightest of the prescribed punishments (Hudud) is eighty [lashes]." Thereupon, Umar (RA) ordered its

implementation. [3]

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(1) This incident is narrated in: Muwatta Malik 4/992, ad-Daraqutni 4/23, and Al-Sunan al-Kubra by al-Bayhaqi 6/183. Ibn Hajar stated in 'at-Talkhis al-Habir' (3/139) that its chain of narration is authentic (Sahih).

(2) See An-Nawadir wa-al-Ziyadat 3/402; Al-Jami' li-Masail al-Mudawwanah 15/721; At-Tawdih fi Sharh Mukhtasar Ibn al-Hajib 7/416; Al-Mukhtasar al-Fiqhi li-Ibn 'Arafah 9/126.

(3) Narrated by Imam Muslim, Hadith No. (1906).

Narrated by Sa'ib ibn Yazid (RA), who said: During the era of the Messenger of Allah (peace and blessings of Allah be upon him), the reign of Abu Bakr (RA), and the beginning of the Caliphate of Umar (RA), when an intoxicated person was brought to us, we would strike him with our hands, shoes, and cloaks. Toward the end of Umar (RA)'s reign, he administered forty lashes. Later, when people began to transgress and indulge in vice, he administered eighty lashes (1).

The Companions agreed on equating the punishment for drinking alcohol with the punishment for slander (Qadhf). For instance, Ali ibn Abi Talib (RA) said: "We believe he should be given eighty lashes; because when he drinks, he becomes intoxicated, and when he is intoxicated, he talks nonsense, and when he talks nonsense, he slanders falsely"—or as he stated it. Consequently, Umar (RA) applied eighty lashes as the prescribed punishment (Hadd) (2).

To clearly understand the scope of Umar (RA)'s independent reasoning (Ijtihad) here and the method of resolving the complexities arising from it, it is necessary to know the opinions of the scholars regarding the punishment for drinking alcohol. They are divided into three views on this matter:

First Opinion: The prescribed punishment (Hadd) for drinking alcohol is eighty lashes (3).

Second Opinion: The prescribed punishment (Hadd) for drinking alcohol is forty lashes (4).

Third Opinion: There is no specific hadd (prescribed punishment) for this (5). Furthermore, it has been narrated from the Prophet (peace and blessings of Allah be upon him) through mutawatir (mass-transmitted) reports that he did not establish any specific hadd regarding the consumption of alcohol (6).

Following this, we will review the scope of Umar (ra)'s ijtihad (independent legal reasoning) based on these viewpoints.

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(1) Narrated by Bukhari, Hadith No. 6779.

(2) Malik narrated it in Muwatta 5/1234; Abdur Razzaq in his Musannaf, Hadith No. 13542; and Nasai, Hadith No. 5269.

(3) This is the school of the Hanafi, Maliki, and Hanbali; see: Al-Bahr ar-Raiq 5/31, Al-Dhakhira 12/204, Sharh Muntaha al-Iradat 3/362.

(4) This is a narration of the Shafi'i and Hanbali schools; see: Al-Mughni 12/499, Nihayat al-Muhtaj 15/8, Al-Muhalla 12/367.

(5) This is the opinion of some jurists; see: Al-Muhalla 12/365, Fath al-Bari 12/72 and 74. Ibn Hajar states in Fath al-Bari 12/75: In my opinion, this is the view of Bukhari.

(6) See: Sharh Ma'ani al-Athar 3/155.

And for those who believe that the punishment is not fixed (muqaddara), there is no ambiguity regarding the ijtihad of Umar. Since it was not a crime with a penalty predefined by Sharia, Umar exercised ijtihad to determine what was appropriate for it. This is a political ijtihad regarding the determination of ta'ziri (discretionary) punishment, which the ruler has the authority to specify based on public interest.

Those who believe the hadd (prescribed punishment) is forty say: The portion exceeding forty is included in ta'zir (discretionary punishment) (1), which is considered an addition to the hadd due to the existence of specific reasons, and this is a valid ijtihad.

For those who say the hadd is eighty, their response can be viewed from two perspectives:

First Perspective: Not acknowledging the statement that the Prophet (peace be upon him) struck forty lashes. Rather, the matter was left to ijtihad. Thus, in the Prophet's time, this punishment was not fixed at a specific number. Otherwise, the Companions would not have opposed it. Instead, they exercised ijtihad in determining it during the time of Umar, and subsequently reached a consensus on eighty (2).

Second Perspective: Times have changed and transgression has increased; therefore, the Companions reached a consensus on this punishment. Consequently, for people of their time, this was analogous to the ruling of the Prophet (pbuh) (3).

However, this is problematic because it permanently alters the Sharia-mandated hadd from its original foundation, and it has not been connected to any public interest that would justify a change in the ruling.

(9) Treaty on collecting Jizya without mentioning the name 'Jizya':

This occurred with the tribe of Taghlib. They were a powerful tribe among the Arabs. They proposed to Umar that they would pay an amount greater than the Jizya, provided it was not imposed upon them under the name of 'Jizya'.

(1) See: Ma'rifatus Sunan wal Athar 13/53, Nihayatul Muhtaj 8/16, Fathul Bari 12/71.

(2) See: Sharh Ma'anil Athar 3/155-158, Az-Zay'inah 12/205. Based on this, they have provided an explanation for the mention of the number forty in authentic narrations; see: Sharh Ma'anil Athar 3/153-155.

(3) See: Al-Bahrur Ra'iq 5/31.

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Zur'ah ibn Nu'man or Nu'man ibn Zur'ah at-Taghlibi said to him: (O Commander of the Faithful, I adjure you by Allah regarding Banu Taghlib! By Allah, they are Arabs. They consider paying Jizya a humiliation, and they are a very warlike people. Therefore, do not deprive yourself of their cooperation against your enemies. They are a people who—I believe he said—do not have ready cash, but rather they are owners of livestock. So, impose Sadaqah (Zakat) upon them.) Thereafter, he sent someone to them, and when they returned, he imposed double Sadaqah upon them. (1)

Umar (may Allah be pleased with him) made a treaty with them to the effect that double the

amount taken from a Muslim as Sadaqah for wealth and livestock would be taken from them. (2)

The scholars have differed on whether this ruling is like Zakat or like Jizya. (3)

In this case, the correct ijtihad (legal reasoning) is that he did not abolish the Jizya for them; rather, for the sake of public interest, he merely removed the name 'Jizya' from it. And there is no prohibition in Sharia against doing so.

(10) Determining the Khilafah based on the consultation of six people:

Narrated from Abdullah ibn Umar (may Allah be pleased with them both), he said: (It was said to Umar: Will you not appoint a successor? He said: If I appoint a successor, then one who was better than me—namely Abu Bakr—also appointed a successor. And if I leave it, then one who was better than me—namely the Messenger of Allah (peace and blessings of Allah be upon him)—also left it.) (4)

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(1) Ibn Zanjawayh narrated this in 'Al-Amwal' on page 130, Al-Bayhaqi in the book 'As-Sunan al-Kubra' (18796); and the core matter of the treaty is found in Musannaf Abdur Razzaq (9974) and Ibn Abi Shaybah (10547).
(2) See: Al-Mabsut 2/187, Al-Mughni 10/581.
(3) Most jurists have followed the practice of collecting this double Sadaqah narrated from Umar (may Allah be pleased with him). However, jurists have differed over whether its ruling should be like Jizya, or whether it should be classified under the ruling of Zakat in terms of the categories of expenditure and the method of collection. It has been said: It will be collected as Zakat and spent

as Jizya—this is the Hanafi and Hanbali school of thought; see: Al-Bahr al-Raiq 5/126, Sharh Muntahal Iradat 1/369. Alternatively, it has been said: It will be collected as Jizya and spent as Jizya—this is the Shafi'i school; see: Nihayat al-Muhtaj 8/97. Regarding the Maliki school, Ibn Rushd states in 'Bidayat al-Mujtahid' 2/168: (No clear statement from Imam Malik is preserved on this matter). See: Al-Mudawwanah 1/333; for this reason, they do not support the practice of doubling it; see: At-Tahdhib fi Ikhtisar al-Mudawwanah 1/430, Hashiyat al-Adawi ala Kifayat al-Talib 1/492.

(4) Imam Bukhari narrated it (7218), and Imam Muslim (1823).

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They said: (O Leader of the Believers! Make a will or appoint a successor. He said: I do not find anyone more entitled to this matter than those individuals with whom the Messenger of Allah (peace and blessings of Allah be upon him) was pleased at the time of his death. Then he mentioned the names of Ali, Uthman, Zubayr, Talha, Sa'd, and Abdur Rahman).(1)

And he said: (If the time of my death draws near, the Caliphate shall be decided by consultation among these six people, with whom the Messenger of Allah (peace and blessings of Allah be upon him) passed away while being pleased).(2)

This was a public welfare-oriented administrative policy that was not contrary to 'Nass' (explicit scriptural provision). This is because every path to attaining leadership is Ijtihadi (subject to scholarly discretion), as long as it does not involve any prohibited (haram) elements.

It is noteworthy here that the Prophet (peace and blessings of Allah be upon him) did not appoint anyone as Caliph; therefore, the Companions reached a consensus on Abu Bakr (RA). Subsequently, Abu Bakr (RA) preferred to appoint Umar (RA) as Caliph. Following that, Umar (RA) decided to establish a provision for consultation among six Companions of the Prophet (peace and blessings of Allah be upon him), and they elected Uthman (RA) from among

themselves. Then, after the martyrdom of Uthman (RA), the Companions took the oath of allegiance (Bay'ah) at the hands of Ali (RA) in the mosque. These are various methods of the ruler appointment process, which prove that all of this falls under 'Siyasah Shari'ah' (Sharia-based administrative policy), where the aim is to seek what is more beneficial for the people.

(11) Prohibition of performing Hajj al-Tamattu:

One of Umar (RA)'s Ijtihads was to forbid performing Hajj al-Tamattu. This is a complex issue, as significant differences of opinion exist regarding the true nature and interpretation of this Ijtihad.

A group of Companions agreed with Umar (RA) regarding the prohibition of Hajj al-Tamattu, such as Uthman, Muawiyah, and Ibn Zubayr (RA). Conversely, other Companions opposed him, such as Ali ibn Abi Talib (3), Ibn Umar (4), and Ibn...

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(1) Bukhari (3700) narrated this.
(2) Muslim (567) narrated this.
(3) Narrated from Marwan ibn al-Hakam, who said: I saw Uthman and Ali (RA). Uthman was forbidding Tamattu' and the performance of Hajj and Umrah together. When Ali (RA) saw this, he entered the state of Ihram for both and said: "Labbayka Umratan wa Hajjatan" (Here I am for Umrah and Hajj). He said: "I cannot abandon the Sunnah of the Prophet (peace and blessings of Allah be upon him) for the words of any person." Bukhari (1563) and Muslim (1223) narrated this.
(4) Narrated from Salim, who said: Ibn Umar (RA) was asked about Hajj at-Tamattu'. He ordered its performance. It was said to him: "Your father used to forbid it." He said:...

...Abbas (1), Imran ibn Husayn (2), Sa'd ibn Abi Waqqas (3), and Aisha (4) - may Allah be pleased with all of them.

Therefore, this ijtihad (legal reasoning) was not a unanimous matter among the noble companions (may Allah be pleased with them). Rather, disagreement arose among them regarding this; consequently, many of them rejected and opposed it (5).

Scholars have expressed three opinions regarding what Umar (may Allah be pleased with him) intended by forbidding 'Tamattu'':

First Opinion: It was to cancel the Hajj and convert it into Umrah (6).

Therefore, what Umar (may Allah be pleased with him) forbade was the cancellation of that Hajj which the noble companions performed with the Prophet (peace and blessings of Allah be upon him) during their pilgrimage; because...

= "Indeed, my father did not say what you are saying; rather, he said: 'Separate Umrah from Hajj'; meaning, do not complete Umrah in the months of Hajj unless you have the sacrificial animal (Hady) with you. He wanted the House of Allah to be visited at other times of the year as well. Yet you have made it forbidden (Haram) and are punishing people for it, whereas Allah the Almighty and His Messenger (peace and blessings of Allah be upon him) have made it permissible (Halal)." It was said to him: "If people argued more against him (Umar), he would say: 'Is the Book of Allah more deserving of being followed, or Umar?'" This was narrated by Ahmad (5700) and Abdur Razzaq in the book 'Al-Amali fi Athar as-Sahabah' (96).

(1) Narrated from Abu Nadrah, who said: Ibn Abbas used to order Tamattu' and Ibn al-Zubayr used to forbid it. Muslim narrated this (1217).
(2) Narrated from Imran, who said: "The verse regarding Tamattu' was revealed in the Book of Allah, i.e., Hajj at-Tamattu'. The Messenger of Allah (peace and blessings of Allah be upon him)

commanded us to do it. No verse was revealed after it to abrogate the verse of Tamattu', nor did the Messenger of Allah (peace and blessings of Allah be upon him) forbid it until his passing. Later, a man said whatever his personal whim suggested." Bukhari (4598) and Muslim (1226).

(3) Narrated from Ghunaym ibn Qais, who said: I asked Sa'd ibn Abi Waqqas (may Allah be pleased with him) about Tamattu', and he said: "We did it, while this person (meaning the Meccans) was a disbeliever at that time." This was narrated by Muslim.

(1225).

(4) See: Al-Mughni 3/238.

(5) See: Al-Mughni 3/238, Umdatul Qari 9/199, Majmu'ul Fatawa 26/278, At-Tawdih li-Sharh al-Jami' al-Sahih 11/235.

(6) See: Sharh Ma'ani al-Athar 2/146, Al-Mufhim lima Ashkala min Talkhis Muslim 3/317, Ikmalul Mu'allim 4/294, Ahkamul Qur'an lil Jassas 1/338, Tarhut Tasrib 5/18. It is noteworthy here that no jurist like Al-Jassas has applied the threat of punishment to this meaning. And the issue of the prohibition of Tamattu' has been distinguished from the state of discouragement (tanzihi) or impermissibility. Again, some have interpreted it to mean only one thing, which is faskh or the invalidation of the Hajj.

This was specific to them, so there is no opportunity for anyone else to do so. And the matter of prohibiting the faskh or invalidating the Ihram of Hajj (converting it into Umrah) is the opinion of the majority (Jumhur) of jurists. Some have narrated Ijma (consensus) on this matter. Ibn al-Arabi

mentioned: "Consensus has been established on abandoning this Mut'ah (faskh of Hajj), although there was slight disagreement regarding this in the early period, which was later resolved." However, this (permissive) opinion has been called isolated (shadh).

On this basis, there is no ambiguity regarding the prohibition; because Umar (RA) did not consider it a Sharia matter, rather it was forbidden to him. He used to forbid people from what he considered forbidden, and according to his Ijtihad, there was no legal basis for it.

Second opinion: He prohibited the Mut'ah of women (temporary marriage) and turned away from the prohibition of Hajj Tamattu' and gave his opinion in favor of its validity.

Third opinion: He prohibited the prevalent Tamattu'. And here, Tamattu' includes 'Qiran' Hajj as well.

And this creates a question or complexity regarding the consensus of the scholars on the validity of Hajj Tamattu'.

(1) Ahkamul Qur'an, Ibn al-Arabi 1/180; Ibn Abd al-Barr says in Al-Istidhkhar 4/95: (Among the companions, I do not know anyone who did not permit the faskh of Hajj into Umrah). The motive for this faskh not being valid is the school of the Hanafi, Maliki, and Shafi'i majority jurists; see: Tabyin al-Haqa'iq 2/21, Al-Bayan wa at-Tahsil 4/58, Asna al-Matalib 1/462. The opinion of Imam Ahmad bin Hanbal is that this is a general Sharia provision; when Salamah bin Shabib said to him: "O Abu Abdullah, everything of yours is so beautiful and good, except for one thing—you speak of performing faskh of Hajj!" Then Imam Ahmad said: "I thought you had intelligence! I have eighteen authentic and excellent Hadiths regarding the faskh of Hajj; shall I abandon them for your sake?" See: Al-Kafi, Ibn Qudamah 1/480.

(2) See: Ahkamul Qur'an, Ibn Faras 1/229.

(3) See: Al-Muhalla 5/98, At-Tawdih, Ibn al-Mulaqqin 11/236.

(4) See: Sahih Muslim bi Sharh al-Nawawi 8/169.

(5) See: Sharh Sahih al-Bukhari by Ibn Battal 4/245.

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Imam Shafi'i says: (Because the Book, the Sunnah, and all matters on which I know of no disagreement—indicate that performing Hajj at-Tamattu' by combining Umrah with Hajj, Hajj al-Ifrad, and Hajj al-Qiran—are all permissible options).

The jurists are divided into three primary opinions regarding the explanation of this prohibition or restriction:

First opinion: This falls under choosing the better option for them, and this prohibition is intended to signify dislike (karahah), not absolute prohibition (tahrim). The literal implication of their statement is that there was no mandatory obligation from 'Umar (RA) in this matter.

Second opinion: 'Umar (RA) did not forbid Tamattu', but rather he guided them toward what was more excellent. That is, separating Hajj and Umrah so that they may perform each through a separate journey. This is better for them than performing Hajj and Umrah together in one trip.

Ibn Abd al-Barr says: (The prohibition of Tamattu' by 'Umar ibn al-Khattab (RA) is, in my view, a disciplinary prohibition and not a prohibition of unlawfulness (haram). For he knew that Tamattu' is permissible, Qiran is permissible, and Ifrad is also permissible. Therefore, when the legality and option for all of these were established for him, he chose Ifrad and encouraged what he deemed preferable).

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(1) Mukhtasar al-Muzani 1/345-346; a group of scholars have reported a consensus, see: Ma'alim al-Sunan 2/166-167; At-Tamhid by Ibn Abd al-Barr 8/205; Sharh al-Nawawi on Sahih Muslim 8/169; Al-Jami' li-Ahkam al-Qur'an 2/387; Majmu' al-Fatawa 26/49.
(2) See: Ikmal al-Mu'lim 4/294-295; Sharh al-Nawawi on Sahih Muslim 8/169; Ahkam al-Qur'an by al-Jassas 1/344-345; Ahkam al-Qur'an by al-Kiya al-Harrasi 1/99; Al-Muntaqa Sharh al-Muwatta 2/235; Sharh al-Zurqani on al-Muwatta 2/377; Tarh al-Tathrib 5/28 and 18/5.
(3) See: Zad al-Ma'ad 2/193-195; Majmu' al-Fatawa 26/278; and Imam Shafi'i says in his work 'Al-Umm' 7/226: (No prohibition from him regarding Umrah during the months of Hajj has been reported, and the absence of prohibition here negates both prohibition (haram) and dislike (karahat). Therefore, it falls within the scope of choice and selecting the better option); see also: Bahr al-Madhhab by al-Ruyani 3/397; Ma'alim al-Sunan 2/167.
(4) Al-Istidhkar 4/94.

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The majority of scholars are of the opinion that Umar (RA) did not forbid Hajj al-Tamattu'; rather, he only forbade Faskh (dissolving the Hajj) (1).

The practice of Ibn Umar (RA) serves as a witness in favor of these two views; for he used to severely criticize those who clung to Umar’s (RA) prohibition of Tamattu‘. When they would say to him, ‘You are opposing your father,’ he would reply, ‘Truly, my father did not say what you claim.

He only said: separate Umrah from Hajj; that is, Umrah is not complete during the months of Hajj without a Hadi (sacrificial animal). And he desired that the House of Allah be visited at times other than the Hajj season as well. Yet you have made it forbidden and are punishing people for it' (2).

Therefore, there is no complexity in this matter, as Umar (RA) did not prevent them from any Sharia-compliant act, but rather guided them toward what was more excellent.

Third Opinion: Umar (RA) made this mandatory for them because it was better for them, and to ensure that people did not turn away from it, so that Mecca would not become deserted, and it was easier and more beneficial for the residents of Mecca (3).

Based on all these opinions, one of the reasons for Umar's (RA) position was his fear that Mecca might become deserted outside the Hajj season and overly crowded during the Hajj season (4). Furthermore, he wanted to ensure that people did not forget Hajj al-Ifrad and Hajj al-Qiran, as he observed that people were increasingly favoring Tamattu' Hajj due to its ease; thus, he feared the loss of this symbol or regulation (5).

Thus, this statement regarding the prohibition is considered a public-interest Ijtihad based on Siyasah Shari'ah (Sharia-compliant state policy). It is not something outside the consensus of Siyasah Shari'ah; rather, it is an acceptable Ijtihad because it was linked to a specific and exceptional situation where Umar (RA) feared a major Fitnah or harm that...

(1) See: Al-Istidhkar 4/95, and it likely includes both statements: those who consider it Makruh (disliked) and those who say it is better.
(2) This is narrated by Ahmad (5700) and Abdur Razzaq in 'Assanus Sahaba' 96, and Al-Bayhaqi in 'As-Sunan al-Kubra' (8876).
(3) See: Majmu'ul Fatawa 26/278; and see: Jami'ul Masa'il 1/320-321, At-Turuq al-Hukmiyyah 1/47.
(4) See: At-Tamhid, Ibn Abdil Barr 8/210, Ikmal al-Mu'lim 4/295, Ahkamul Qur'an, Ilkiya Al-Harrasi 1/99.

(5) See: At-Tamhid, Ibn Abdil Barr 8/210, Ikmal al-Mu‘lim 4/296.

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Due to the fear of the Kaaba premises becoming deserted by those performing Tawaf and Umrah, and because the number of people performing Hajj Tamattu was increasing significantly. Alongside this, he feared that because it was easier, people might forget the regulations of Hajj Ifrad and Qiran; although he did not consider Tamattu to be an inferior (Mafdul) matter, but rather that it was not the absolute best. Therefore, in the interest of addressing these potentially harmful circumstances, this was a temporary prohibition. He did not completely forbid them from performing Umrah; rather, he instructed them to make a separate journey for Umrah and not to combine Umrah with Hajj.

For this reason, those who later exaggerated regarding this prohibition were not considered correct in their stance by the noble scholars. Ibn Taymiyyah states: (Thereafter, when discord arose within the Ummah after the martyrdom of Uthman and people were divided into two groups: one group inclined towards Uthman and his supporters, while the other group inclined towards Ali and his supporters; at that time, a group of Umayyad rulers began to forbid Hajj Tamattu and would punish those who performed it. They even prohibited anyone from performing Umrah during the Hajj months. And among this, a form of ignorance and oppression was present) (1).

And these and other Ijtihads of Umar (RA) (2).

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(1) Majmu'ul Fatawa 26/ 278-279.

(2) To know in detail about the Ijtihads of Umar (RA), see: Ijtihadatu Umar ibn al-Khattab: Dirasatun Usuliyyah — Khalid Muhammad Hanafi; Manhajiyyatu Umar fil Ijtihadi Ma'an Nas — Muhammad At-Tawil; Al-Ijtihadul Usuliyyah Inda Amirul Mu'minin Umar ibn al-Khattab — Muhammad Fuad Zaher; Manhaju Umar fit Tashri' — Muhammad Baltaji.

Third Chapter

Sharia Politics in the Caliphate of Uthman ibn Affan

In the administrative and political governance of the people, the Rightly Guided Caliph Uthman ibn Affan (may Allah be pleased with him) followed the path of justice, excellence (Ihsan), and mercy, just like the previous Rightly Guided Caliphs (may Allah be pleased with them all).

In his professional life, several Fiqhi Ijtihads (legal reasonings) related to public interest (Maslahat) are observed, among which one of the most prominent is:

(1) Compilation of the Quran Majīd:

Imam Bukhari has described the event of the compilation of the Quran during the era of Uthman (Radhiallahu Anhu) in his Sahih. It is narrated from Anas ibn Malik (Radhiallahu Anhu) that Hudhayfah ibn al-Yaman came to Uthman (Radhiallahu Anhu). At that time, he was involved in the

conquest of Armenia and Azerbaijan along with the people of Syria and Iraq. The differences in the recitation (Qira'at) of the Quran among them alarmed Hudhayfah. Hudhayfah informed Uthman (Radhiallahu Anhu) about this matter. Then Uthman sent a messenger to Hafsa (Radhiallahu Anha) with the message: "Send us the original manuscripts kept with you so that we can make multiple copies (Mushaf) from them and return them to you later." Then Hafsa (Radhiallahu Anha) sent them to Uthman. He then instructed Zayd ibn Thabit, Abdullah ibn al-Zubayr, Sa'id ibn al-As, and Abdur Rahman ibn al-Harith ibn Hisham, and they recorded them into Mushafs. Uthman addressed the three Qurayshis, saying: "If you differ with Zayd ibn Thabit regarding any word of the Quran, write it in the language (dialect) of the Quraysh, for the Quran was revealed in their language." They did exactly that. When the task of preparing multiple Mushafs from the manuscripts was completed, Uthman returned the original manuscripts to Hafsa (Radhiallahu Anha). Then he sent one of the newly compiled Mushafs to every province of the state and ordered that any other manuscripts or copies of the Quran present in Mushafs be burned. (1)

Exactly the same can be said about this compilation as was said about the compilation of the Mushaf during the era of Abu Bakr (Radhiallahu Anhu)—that is, it was a matter related to public interest (Maslahat); and it does not imply invalidity simply because the Prophet (PBUH) did not perform this task.

(1) Narrated by Bukhari (4987).

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However, another meaning can be added here which is specifically related to the compilation of Uthman (Radhiallahu Anhu); and that is accepting only one Harf (mode/dialect) out of the seven Harfs.

It has been proven through Sahih Hadiths from the Prophet (peace and blessings of Allah be upon

him) that the Quran was revealed in seven Harfs:

Narrated from Ibn Abbas (Radhiallahu Anhuma) that the Messenger of Allah (peace and blessings of Allah be upon him) said: **“Jibril made me recite in one Harf. Then I kept requesting him for more and he continued to increase it for me until it reached seven Harfs.”** (1)

Narrated from Abdur Rahman ibn Abd al-Qari, he said: I heard Umar ibn al-Khattab (Radhiallahu Anhu) saying: **“I heard Hisham ibn Hakim ibn Hizam reciting Surah Al-Furqan in a way that was different from how I recite it, whereas the Messenger of Allah (peace and blessings of Allah be upon him) had taught it to me. I was almost about to attack him, but I gave him respite until he finished his recitation. Then I grabbed him by his cloak and brought him to the Messenger of Allah (peace and blessings of Allah be upon him) and said: I heard him reciting in a way different from how you taught me. Then the Messenger of Allah (peace and blessings of Allah be upon him)...”**

(...peace be upon him) said to me: "Let him go." Then he said to him: "Recite." So he recited. Then the Messenger of Allah (peace and blessings of Allah be upon him) said: "It was revealed in this way." Then he said to me: "Recite." I recited. Then he said: "It was revealed in this way. Indeed, the Quran was revealed in seven modes; so recite from it whatever is easy for you." (2)

Scholars have differed regarding the meaning of the "seven modes." (3)

Based on this disagreement, scholars are divided into two main opinions regarding the true nature of the compilation work performed by Uthman (may Allah be pleased with him):

First View: He compiled the Mushaf based on only one mode and burned the remaining modes.

This is because reciting in those modes was among the permissible (mubah) matters that Allah Almighty allowed as a flexibility and mercy for the Ummah in the beginning. This was merely a variation in some words while maintaining unity of meaning, so that reciting the Quran would be easy for them despite their linguistic differences and not difficult at the start. Later, when Uthman (may Allah be pleased with him) and the companions with him feared that...

(1) Narrated by Bukhari (3211) and Muslim (819).
(2) Narrated by Bukhari (5041) and Muslim (818).
(3) For these views and further discussion, see: 'Hadithul Ahruf as-Sab'ah', Abdul Aziz Qari, pages 50-62.

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...as a result, factionalism and disputes were arising, so they exercised independent reasoning (ijtihad) and prioritized removing this strife (fitna) or harm over the benefit of utilizing that flexibility. No obligatory (wajib) matter was abandoned in this; rather, it was only regarding a permissible (mubah) matter (1).

Second View: He compiled the Mushaf in seven modes, and these modes are still present in the current Mushaf (2).

According to this view, the same sense of ijtihad is observed in Uthman's (may Allah be pleased with him) compilation work as was the case with the ijtihad of Abu Bakr (may Allah be pleased with him).

(2) Selling a lost camel:

(Narrated by Zaid bin Khalid al-Juhani that a man asked the Prophet (peace and blessings of Allah be upon him) about lost property he had found. He said: "Memorize its container and its string, then announce it publicly for one year. After that, utilize it. If its owner comes, return it to

him." The man asked: "What do you say about a lost camel?" He became angry until his cheeks turned red, or as the narrator said: his face turned red. Then he said: "What business do you have with it? It has its own water-reservoir and its feet. It can reach water sources and eat from trees. So leave it alone until its owner finds it." The man asked: "What about a lost sheep?" He said: "It is for you, or for your brother, or for the wolf.") (3)

The Prophet (peace and blessings of Allah be upon him) forbade interfering with a lost camel. This is because a camel is not something that needs to be picked up; rather, if it gets lost, it is capable of fulfilling its own needs. It can protect itself from dangers until its owner finds it or it returns to the owner (4).

(1) See: Tafsir at-Tabari 1/57-65, Sharh Mushkil al-Athar 8/123-124, A'lam al-Hadith lil-Khattabi 2/1208, At-Tamhid by Ibn Abd al-Barr 8/293, Majmu' al-Fatawa 13/396-397, Al-Turuq al-Hukmiyyah 1/47-48; Ibn Taymiyyah mentioned this as the opinion of the majority of scholars and predecessors, see: Majmu' al-Fatawa 13/395.
(2) See: Al-Fasl fil-Milal wal-Ahwa' wan-Nihal 2/934-936, Al-Muntaqa Sharh al-Muwatta 1/347, Al-Intisar lil-Qur'an lil-Baqillani 1/351-352, Al-Mufhim lima Ashkala min Talkhisi Muslim 2/448.
(3) Bukhari (91) and Muslim (1722) have narrated the Hadith.
(4) See: A'lam al-Hadith lil-Khattabi 1/204, Sharh an-Nawawi 'ala Sahih Muslim 12/23.

However, Uthman (may Allah be pleased with him) exercised **Ijtihad** (independent legal

reasoning) to gather these lost animals for the purpose of preserving them for their owners. If no one came to claim them, he would sell them and preserve their price for them.

Narrated from Zuhri, he said: (Umar wrote to his officials: "Do not let lost animals go astray." He said: "The camels used to breed and visit watering holes in their natural state, and no one would obstruct them until someone who recognized them would come and take them. Finally, when the era of Uthman (may Allah be pleased with him) came, he sent word saying: 'Gather them and announce them. If someone comes who recognizes them, [fine]; otherwise, sell them and deposit their price in the public treasury (Bayt al-Mal). If anyone subsequently comes and identifies them, pay him that price.'") (1)

Narrated from Sa'id ibn al-Musayyib, he said: (I saw Ali constructing a pen for lost animals. He would provide them with a balanced amount of fodder from the public treasury, so they neither became overweight nor emaciated. They would keep their necks held high. Whoever provided proof regarding an animal would take it; otherwise, he would maintain them in that state and not sell them. Sa'id ibn al-Musayyib said: "If I were entrusted with any matter concerning the Muslims, I would have done exactly the same.") (2)

Narrated from Ibn Shihab, he said: (During the era of Umar ibn al-Khattab, lost camels roamed freely and bred, and no one would touch them. Finally, when the era of Uthman ibn Affan came, he ordered them to be announced, and they were subsequently sold. When the owners eventually came, they were given the price of the animals.) (3)

To clearly understand the **Ijtihad** of Uthman (may Allah be pleased with him) in this regard, it is necessary to review the positions of the noble scholars concerning the ruling on picking up or finding a lost camel. Jurists have divided into several opinions regarding the ruling on capturing a lost camel:

First Opinion: It is recommended (Mustahab) to take it for the purpose of announcement. This is better than leaving it to be lost; because it...

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(1) Abdur Razzaq narrated this in the book 'Al-Musannaf' (18606).

(2) Ibn Abi Shaybah narrated this in the book 'Al-Musannaf' (21144).

(3) Malik narrated this in the book 'Al-Muwatta' (4/1099).

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...is included in the chapter on the preservation of people's property. However, if there is a fear of it being destroyed, it is not possible for him to leave it behind.

They have applied the prohibition mentioned in the Hadith to one of two matters:

First: (This refers to the early era, because at that time honest and righteous people predominated; consequently, if someone who found an item left it there, it would not fall into the hands of a dishonest person. But in our era, a person who finds an item cannot be certain that the hand of a dishonest person will not reach it after they leave. Therefore, its survival and preservation for its owner lie in its collection. Hence, taking it is preferable to letting it be destroyed).

Second: Or it is applied to items where there is no fear of destruction. However, if there is a risk of loss, then taking it for the purpose of preservation is preferable.

Second Opinion: If it is found in the desert and there is a risk of it being destroyed, or during times of looting, then picking it up is permissible.

Third Opinion: It is not permissible to pick it up except by the Imam or his representative. However, if it is found in a place where there is a fear of it being lost, or near 'Dar al-Harb' (abode of war), or in a place where the residents consider the looting of Muslims' property to be lawful, or if it is found in a waterless desert—then taking it for preservation is better; just as the Imam can take it for preservation. The Imam shall serve the public interest by preserving it in a pasture or by selling it and preserving its value.

.....

(1) This is the opinion of the Hanafi school of thought; see: Sharh Mukhtasar al-Tahawi 4/64-65, Al-Mabsut 10/11, Al-Ikhtiyar li-Ta'lil al-Mukhtar 3/34.

(2) See: Al-Bahr ar-Ra'iq 5/167.

(3) Al-Mabsut 11/11, and see: Fath al-Qadir, Ibn al-Humam 6/125.

(4) See: Al-Binayah Sharh al-Hidayah 7/334.

(5) This is the opinion of the Shafi'i school of thought; see: Kifayat al-Nabih, Ibn al-Rif'ah 11/457-458, Nihayat al-Muhtaj 5/433; it is further added here that Shafi'is distinguish between picking up for preservation and for ownership. Therefore, it cannot be picked up in the desert for the purpose of ownership, but it can be taken during times of looting.

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(6) See: Al-Mughni 6/108-109, Al-Mubdi' fi Sharh al-Muqni' 5/120, Ghayat al-Muntaha 1/814, Kashshaf al-Qina' 4/212.

(7) Sharh Muntaha al-Iradat 2/387.

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Fourth Opinion: It should not be interfered with, unless there is a fear of misappropriation (loss or embezzlement) (1).

This difference of opinion is primarily based on understanding the objective of the prohibition mentioned in the Hadith. When the Prophet (peace be upon him) forbade picking up stray camels, was his objective an absolute prohibition, or was it a prohibition against picking them up for fear of loss to the owner?

We can divide this difference of opinion into two streams:

First stream: Those who consider picking them up to be permissible. They interpret the Hadith such that its address is not an absolute prohibition regarding found items, or that it was a prohibition for a specific period of time. And this is the opinion of the Hanafi school of thought.

Second stream: Fundamentally, picking them up is prohibited, except for certain specific public welfare cases. This is the opinion of the other three schools of thought. They fundamentally act upon the literal meaning of the Hadith and determine exceptions by considering the determination of the Hadith's purpose based on a specific meaning.

Therefore, according to the understanding of all scholars, the purpose of prohibiting the catching of lost camels in the Hadith is not that they should be absolutely ignored even if it results in their destruction and the owner suffers a loss; rather, this prohibition came for a specific reason. The honorable scholars have differed in interpreting that reason. The Ijtihad of Uthman and Umar (R.A.) is also included in the understanding of the Hadith and its meaning. This is a logical matter, as there is a possibility for it. Thus, this is the Ijtihad of a just and wise Imam regarding understanding the Hadith and applying it to achieve public welfare in a practical context. And this

is part of Sharia-based governance (Siyasah Shar'iyyah).

This Ijtihad of Umar and Uthman (R.A.) can be applied to one of two matters:

Firstly: This prohibition mentioned in the Hadith was associated with a specific time. Therefore, when the times changed, the ruling also changed.

(1) This is the opinion of the Maliki school of thought; see: Sharh Mukhtasar Khalil, by al-Kharshi 7/127; Hashiyat ad-Dasuqi 'ala al-Sharh al-Kabir 4/122.

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Ibn Rushd states:

"Owing to the spread of character erosion and lack of integrity among people over time, differences appeared in the rulings of Umar ibn al-Khattab and Uthman ibn Affan on this matter. During the era of the Prophet (peace and blessings be upon him) and the caliphate of Umar ibn al-Khattab, the ruling for lost animals was that they should not be taken. If someone did take them, they were to make an announcement; however, if the owner was not found, the animal would be released back where it was found. Later, during the era of Uthman (RA), when a lack of trustworthiness became apparent among the people, the ruling was changed to taking the animals and making an announcement. If the owner could not be found, the animal would be sold and the proceeds held for the owner." (1)

Ibn Battal states:

"Uthman (RA) sold the lost camels and kept the proceeds in trust for their rightful owners. Because character erosion had manifested among the people, he believed this would better ensure the preservation of the owners' property." (2)

Secondly: The purpose of the Hadith is not to impose a blanket prohibition on handling lost camels; rather, it is a restriction linked to the interest and welfare of protecting the property rights of the camel's owner, so that no one can interfere with it unjustly.

For this reason, a difference is observed in the practices of Umar (RA) and Uthman (RA) regarding lost camels, as each of them sought what was most beneficial and appropriate for the time.

Imam Shafi'i states:

"If the ruler has a private protected grazing area and no financial burden falls on the animal's owner for its care, then the ruler should act as Umar ibn al-Khattab (RA) did: that is, leave the animal in the grazing area until the owner arrives... But if the ruler has no grazing area and workers must be hired to tend to the animal, resulting in those wages becoming a debt against the animal, then I believe he should act as Uthman ibn Affan (RA) did. However, in cases where it is known that the owner is nearby—for instance, if a specific person's camel is recognized—it should be held and the owner notified; or if the brand of a specific tribe is recognized, then the animal should be held for them for one, two, or three days, or a similar period." (3)

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(1) Al-Bayan wa al-Tahsil 15/360.

(2) Sharh al-Bukhari, Ibn Battal 6/548-549; and for a description of the same meaning see: Al-Muntaqa Sharh al-Muwatta, Baji 6/143-144.

(3) Al-Umm 4/69.

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(3) Increasing the Adhan on the day of Jumu'ah:

Narrated from Sa'ib ibn Yazid, he said: During the era of the Prophet (peace and blessings of Allah be upon him), Abu Bakr, and Umar (may Allah be pleased with them), the start of the Friday prayer Adhan was when the Imam sat on the pulpit. Later, when the era of Uthman (may Allah be pleased with him) came and the number of people increased, he added a third Adhan at a place called 'Zawra'. (1)

Zuhri said: The Commander of the Faithful Uthman introduced the third Adhan. As a result, the Adhan began to be given at the place called Zawra so that people could gather. (2)

In fact, during the era of the Messenger of Allah (peace and blessings of Allah be upon him), Abu Bakr, and Umar, the Adhan was only that which was given in front of him when the Imam sat on the pulpit. There is no disagreement among the scholars regarding this matter. (3)

Ibn Abdil Barr said: (And regarding the first Adhan of the day of Jumu'ah, I do not know of any disagreement that Uthman was the first to do it). (4)

Regarding the ruling on this Adhan, scholars have divided into several opinions:

First opinion: This is a bid'ah (innovation). This has been narrated from Ibn Umar and a certain

Tabi'i (5), and this is also the statement of Sufyan. (6)

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(1) Bukhari narrated this (912). Zawra: A place in the market of Medina.

(2) Ibn Abi Shaybah narrated this in the book 'Al-Musannaf' (5390).

(3) Fath al-Bari, Ibn Rajab 8/215.

(4) At-Tamhid 10/247. Several other statements have been narrated regarding who first introduced this Adhan. For example, it has been said: Umar; it has also been said: Hajjaj ibn Yusuf; it has also been said: Ziyad ibn Abih; and it has been said: Mu'awiya. See: Al-Umm 1/224, Musannaf Abdur Razzaq (5339), Fath al-Bari, Ibn Hajar 2/395.

(5) Ibn Abi Shaybah narrated from Ibn Umar in his Musannaf (5437) that he said: The first Adhan on the day of Jumu'ah is a bid'ah. It is narrated from Hasan (5435) that it is a newly invented matter. Abdur Razzaq narrated its rejection from Ata in his Musannaf (5339). See also: Ahkam al-Quran, Jassas 3/594; Fath al-Bari, Ibn Rajab 8/215. Ibn Umar's statement may be rejectionist, or it may mean that it is something that did not exist before but is good. See: Fath al-Bari, Ibn Hajar 2/394.

(6) See: Fath al-Bari, Ibn Rajab 8/219-220.

Second Opinion: This is not recommended (1).

Third Opinion: This is recommended (2). This is the opinion of the majority (Jumhur) of jurists, which is derived from the Sunnah of ‘Uthman (may Allah be pleased with him) and the practice of the Companions during his era and subsequent times.

Anyway, it remains important to provide an answer regarding this ijtihad (legal reasoning) of ‘Uthman ibn ‘Affan (may Allah be pleased with him), as it involves adding something to a matter of worship.

Answer: This was due to the increase in the number of people and their residences being far away; consequently, he wanted them to be able to prepare for the prayer.

But since the matter is related to acts of worship, it creates a complexity; in such a situation, how can a perspective related to public interest be considered valid?

The answer becomes clear by highlighting the following two aspects:

First Aspect: The ijtihad of the Companions holds a special status in removing doubts regarding what is perceived as being contrary to the *Nass* (textual evidence). They possessed deep wisdom in understanding the *Nass*, so this matter must be taken into consideration. Their ijtihad cannot be equated with the ijtihad of others, especially when we are discussing such a well-known ijtihad for which no opponent is known. Therefore, it is included under ‘Ijma ‘Amali’ (practical consensus).

Second Aspect: Friday prayer (Jumu‘ah) possesses unique characteristics that cannot be used for *Qiyas* (analogy) with anything else. Due to its significance, the fact that it occurs only once a week,

and its occurrence at a specific time, a special necessity arose for it there. No other matter will be included under this, as it is not possible to implement it in other cases.

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(1) This is the opinion of Imam al-Shafi'i, as described in the book 'Al-Umm' (1/224). This is also clearly understood from the practice of Ibn al-Zubayr, as the adhan was not given for it during his rule. Abdur Razzaq narrated this in the book 'Al-Musannaf' (5344).
(2) This is the opinion of the Hanafi, Maliki, and Hanbali schools of thought. See: Hashiya Ibn Abidin 2/261, Hashiya al-Adawi on Sharh al-Khurashi 1/231, and Al-Sharh al-Kabir by Ibn Abi Umar 2/188.

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(4) Inheritance of a woman divorced during terminal illness:

A woman who has received a revocable divorce (Raj'i) shall inherit from her husband if he dies during her waiting period (iddat). Conversely, if a woman who has received an irrevocable divorce (Ba'in) dies during her waiting period, she shall not inherit. These are clear regulations about which there is no doubt.

However, a complex legal issue has arisen, which is— if a man divorces his wife while suffering from a terminal illness that could result in death, whether with the intention of depriving her of inheritance or not. Divorcing in such a state, however, leaves room for suspicion. Such an incident occurred during the era of Uthman (May Allah be pleased with him), and the Companions decided

to grant that woman inheritance from her husband's property.

The incident is— Abdur Rahman ibn Awf irrevocably divorced his wife while he was ill; as a result, Uthman ibn Affan granted her inheritance even after her waiting period had ended (1).

Another similar incident occurred where Uthman (May Allah be pleased with him) granted inheritance to the wives of Ibn Mukammil, although he had divorced them while ill (2).

And this is the opinion of the majority of jurists (Jamhur); because giving an irrevocable divorce while on one’s deathbed raises the suspicion that he intended to deprive her (3).

Imam Shafi'i, in his new opinion (Qawl Jadid), expressed the view that she shall not inherit (4).

This matter of granting inheritance has been narrated from Umar ibn al-Khattab, Uthman, and Ali ibn Abi Talib.

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(1) Malik narrated this in Al-Muwatta 4/822, Abdur Razzaq in Al-Musannaf (12195), Said bin Mansur in his Sunan 2/70, and Al-Bayhaqi in As-Sunan al-Kubra 7/594.
(2) Malik narrated this in Al-Muwatta 4/823, Abdur Razzaq in Al-Musannaf (12196), and Al-Bayhaqi in As-Sunan al-Kubra 7/594.
(3) According to the Hanafis, she will be an heir as long as she does not complete her waiting period (iddat); according to the Hanbalis, she will be an heir as long as she does not remarry; and according to the Malikis, she will be an heir even if she remarries; see: Al-Hidayah 2/251, Al-Bahr ar-Ra'iq 4/46, At-Tawdih fi Sharh Mukhtasar Ibn al-Hajib 4/330, Ash-Sharh al-Kabir ad-Dardir 2/353, Al-Mughni 6/395, Kashshaf al-Qina 4/480.
(4) See: Al-Umm 5/241, Al-Hawi al-Kabir 8/149; this is also the opinion of Ibn Hazm, see: Al-Muhalla 9/486.

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...and Aisha, Ubayy ibn Ka'b, and all other companions of Badr; and no companion is known to have opposed them except for Abdullah ibn Zubayr (1).

Regarding the interpretation of the ijtihad of Uthman (RA) and the other companions who were with him, the esteemed scholars mention that this was primarily done considering **maslahah** (public interest) in removing harm from the wife (2). Alternatively, it was based on the principle: "If a person rushes to obtain something before its appointed time, he is punished by being deprived of it," such as the case of a killer in inheritance (3). Or, it was included under **'sadd al-dhara'i'** (blocking the means to evil), because the husband in this case is accused, and divorce serves as a means (4).

As Ibn Shihab narrates from Talha ibn Ubaydullah, who said: It was said to Uthman (RA): "Why did you make her an heir even though you know that Abdur Rahman did not divorce her with the intention of harming her or fleeing from the Book of Allah Almighty?" Uthman (RA) replied: "I intended for this to become a **sunnah** (established practice), so that people would be afraid of attempting to flee from the Book of Allah Almighty" (5).

The reality is that these principles are not sufficient to be certain about this ijtihad; rather, they serve only as aids or to strengthen the evidence. This is because the matter involves making a divorced woman an heir, whereas the primary ruling is that she should receive nothing. Furthermore, making her an heir causes harm to other heirs. Therefore, blocking the path of this accusation is not sufficient to justify making her an heir, and the matter of punishing the husband does not possess the authority to change the established provisions of Sharia. For this reason, it

is not permissible to apply these principles to other examples, as they are not consistently systematic.

(1) Al-Istidhkar 6/113, Bayan al-Dalil 'ala Butlan al-Tahlil 263; For Ibn Zubayr's opinion see: Musannaf Abd al-Razzaq (12192). Ibn Taymiyyah mentioned that no companion disagreed with Uthman's verdict; rather, Ibn Zubayr's opposition occurred later. See: Majmu' al-Fatawa 31/370; Badai' al-Sanai' 3/219.

(2) See: Al-Hidayah 2/251.

(3) See: Al-Mughni 6/395.

(4) See: Bayan al-Dalil 'ala Butlan al-Tahlil 263, I'lam al-Muwaqqi'in 3/114; Ibn Rushd mentioned in 'Bidayat al-Mujtahid' 3/102 that the reason for disagreement in this matter is whether or not to act upon this principle.

(5) See: Mukhtasar Ikhtilaf al-Ulama, Tahawi 2/434.

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It is clear that the validity of this ijtihad becomes evident when all its evidences are combined; therefore, it is established upon three pillars (**arkan**):

First Pillar: A patient afflicted with a terminal illness (**marad al-mawt**) where there is a fear of death does not have full authority over the property under their ownership. There is a restriction (**hajr**) on their interference regarding property exceeding one-third in the case of inheritance. It is not permissible for them to deprive some heirs and give to others (1).

Therefore, there is no opportunity for the patient to interfere in the portion of their property exceeding one-third. This is a matter of consensus among the four schools of jurisprudence (2) and an **ijma** (unanimous opinion) has been reported in this regard. Ibn al-Mundhir says: "The esteemed scholars have agreed that if a person is afflicted with such a terminal illness that there

is a fear of death, and in that illness he..."

...dies, then in such a state, actions such as gifting to a non-heir (a person who is not an inheritor), giving charity, or freeing a slave will be effective only from one-third of his total assets. Anything that is in excess of one-third will be considered void. (3)

There are several Shari'ah evidences in support of this principle which strengthen it, among which two evidences are as follows:

First Evidence: It is narrated from Imran ibn Husayn that a man freed his six slaves at the time of his death, whereas he had no property other than them. Then the Messenger of Allah (peace be upon him) called them and divided them into three groups. Then he cast lots among them; as a result, he freed two and kept the remaining four as slaves. And he spoke very sternly regarding that man. (4)

From this, it is found in this evidence that a sick person is restricted in terms of interfering with the remaining portion of his property except for one-third. (5)

Second Evidence: Narrated from Abu Bakr (may Allah be pleased with him), he said to Aisha (may Allah be pleased with her) during the illness of his passing: "I had gifted you twenty wasqs of dates from the property of Al-Aliyah; but you did not take possession of it..."

(1) See: Majmu' al-Fatawa 31/369-370.
(2) See: Al-Hidayah 4/526, Ash-Sharh al-Kabir 3/292, Rawdat al-Talibin 3/429, Al-Mughni 6/193; and Ibn Hazm held a different view, see: Al-Muhalla 8/403.
(3) Al-Ijma 130; for the description of consensus, see also: Al-Istidhkar 7/281, Bada'i al-Sana'i

3/219.

(4) Narrated by Imam Muslim (1668).

(5) See: Al-Mufhim lima Ashkala min Sahih Muslim 4/357.

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...you did not acquire it and you did not take possession of it; rather today it is the property of the heir. (1)

The acquisition of the right to inheritance is related to the location and the cause (sabab). Therefore, if any action of a person while on their deathbed falls under the regulations of post-death actions, then it is more logical for their action to be subject to a similar regulation in terms of removing the cause (of marriage) for the purpose of nullifying the wife's right from inheritance. (2)

Second Pillar: The principle of blocking the means to evil (Sadd al-Dhara'i) and preventing harm; this is a reliable principle, however, it is not sufficient on its own to be applied here.

Third Pillar: The ijtihad of the Companions and the consensus of the majority of them regarding the granting of this inheritance. Here, the ijtihad of the Companions becomes strong from two aspects:

Firstly: Their statements themselves are acceptable, although there are detailed descriptions regarding the limits of this acceptability. Therefore, in this special issue, evidence can be presented through their statements or they can be followed.

Secondly: Their ijtihad reveals some acceptable aspects of ijtihad which, if their ijtihad were not present, our...

...would have remained unclear to them. Therefore, the consensus of the majority on this specific situation proves that considering such matters is legally valid according to Sharia. And it is possible to associate matters consistent with this ijtihad with it.

(1) See: Bada'i' al-Sana'i' 3/219.

(2) See: Al-Mabsut 6/155-156.

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Chapter Four

The Sharia-based Politics of the Caliphate of Ali ibn Abi Talib (Radi Allahu Anhu)

Next, we come to the conclusion of the era of the Rightly Guided Caliphs, namely the Rashidun Caliph Ali ibn Abi Talib (Radi Allahu Anhu). Despite the short duration of his caliphate and the occurrence of various disagreements and trials (fitnas) during his era, several influential political ijtihads are observed in his caliphate, which include:

(1) Liability of Craftsmen:

One of the ijtihadi matters that occurred through the political wisdom of Ali (Radi Allahu Anhu) is the liability of craftsmen (1).

The objective of this is that a common laborer or craftsman (Ajir Mushtarak) shall be held responsible if they damage any item, so that people's rights are protected from being lost. It is narrated from Ali (Radi Allahu Anhu) that he used to hold washermen and goldsmiths liable (if they damaged something) and would say: "The condition of the people cannot be reformed except by this" (2).

Similarly, it is narrated that Umar ibn al-Khattab (Radi Allahu Anhu) held those craftsmen liable who were employed to work for the people, and he would place the responsibility for whatever was destroyed in their hands upon them (3).

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(1) A group of jurists from the Maliki school have attributed the matter of craftsmen's liability to all the Rightly Guided Caliphs; however, this attribution is not correct. Rather, it is clearly attributed to Umar and Ali (Radi Allahu Anhu). See: 'Al-Ahkam al-Fiqhiyyah allati Ittafaqa 'alayhal Khulafa'ur Rashidun' 2/844-846. As ash-Shatibi has described the consensus of the Salaf regarding the liability of craftsmen, see: 'Al-Muwafaqat' 3/58.

(2) Ibn Abi Shaybah (21051) and al-Bayhaqi in 'as-Sunan al-Kubra' (11636) have narrated this. Imam ash-Shafi'i narrated this in the book 'al-Umm' and called it weak; see: 'al-Umm' 8/218. As Ibn Abi Shaybah (21049) narrated that Ali (Radi Allahu Anhu) held carpenters liable.

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(3) Ibn Abi Shaybah (21050) has narrated this, and Imam Shafi’i has called it weak in the book ‘Al-Umm’ 8/218.

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There are differences of opinion among the four schools of thought regarding the rules of liability for a common employee (Ajir al-Mushtarak):

According to the Hanafi Madhhab: He must bear the liability for whatever is destroyed as a result

of his work, whether he commits a violation or not. And if goods kept with him are destroyed, then according to Imam Abu Hanifa, he will generally not be liable for that. And according to the Sahibayn (Imam Abu Yusuf and Imam Muhammad), if it is destroyed due to a cause from which it was possible to remain safe, then he will be liable; but he will not be liable for what was impossible to avoid. (1)

According to the Maliki Madhhab: He will generally be liable for whatever is damaged by his hands—such as cutting or burning cloth. However, in tasks that involve risk, such as piercing pearls, performing circumcision, and providing medical treatment, he will not be liable if he is not negligent. And he will be liable if he is negligent regarding what is in his possession or control. (2)

According to the Shafi'i Madhhab: He will not be liable for what is damaged without a violation. (3)

According to the Hanbali Madhhab: He is generally liable for what is damaged by his hands. However, he will not be liable for what is damaged in any other way while in his custody, provided there is no negligence. (4)

We can say that the jurists are generally divided into two paths on this matter:

First path: A common employee must bear the liability for what he damages through his hands (work), whether he is negligent or not. This is the opinion of the majority (Jumhur) of scholars.

Second path: He will not be liable for things damaged through his hands if he is not negligent.

And regarding what did not occur as a result of his handiwork, he will not be liable for it as long as he is not negligent; or according to the Hanafi Madhhab, if it is something from which it was possible to remain alert or safe.

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(1) See: Fath al-Qadir, Ibn al-Humam 9/122; Hashiyat Ibn Abidin 6/35.

(2) See: Hashiyat al-Dasuqi 4/28; Sharh Mukhtasar Khalil, al-Kharaqi 7/28.

(3) See: Rawdat al-Talibin 5/228; Nihayat al-Muhtaj 5/310-311.

(4) See: Al-Insaf 6/73; Kashshaf al-Qina 4/33-34.

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However, there is no problem with this political Ijtihad, and it is clear from three perspectives:

First: The matter allows for explanation. Just as there is an acceptable logical basis for holding a general employee (Ajir Mushtarak) liable, there is also an acceptable basis for not holding them liable. There is no clear scriptural text (Nass) regarding not holding a general employee liable; rather, it is a matter of Ijtihad. Some Caliphs have leaned toward the opinion of holding them liable. Therefore, for the sake of public interest, there is room for Ijtihad on such a matter by a scholar and a righteous Imam, which is included in acceptable Shariah-compliant politics (Siyasa al-Shar'iyyah).

Shatibi Ali (RA), while clarifying the statement—"It is not possible to reform people without this"—says:

"(In this regard, the public interest aspect is that people need craftsmen. They are mostly away from the goods, and negligence and laxity in preservation are more common among them. Despite the acute need for their services, if they were not held liable, it would lead to one of two things:

either people would completely stop giving work to craftsmen, which would be difficult for common people; or they would work but claim immunity for destroyed or lost goods, resulting in the loss of people's wealth, a decrease in caution, and the infiltration of betrayal. Therefore, public interest is inherent in holding them liable.)" (1)

Second: Since the matter allows for explanation and there is no explicit scriptural text (Nass) regarding not holding the employee liable, and public interest and human need are also clear, some jurists (Fuqaha) have given rulings on this matter based on public interest. Some Imams of the Shafi'i school used to say: "For nearly thirty years, I have not given a Fatwa based on either of these two opinions and have not made a decision on any basis other than public interest." (2)

Rabi' has narrated from Imam Shafi'i that he used to think employees should not be held liable, but he would not express this in front of dishonest employees. Again, he believed that a judge should decide based on his own knowledge, but he would not disclose this to dishonest judges. (3)

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(1) Al-I'tisam 2/616.
(2) See: Mughni al-Muhtaj 3/477.
(3) See: Nihayatul Matlab 8/160, Bahrul Madhhab 7/191 and see the statement of Al-Umm-e Rabi' 8/118, 8/219.

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Third Aspect: The fundamental principle regarding the rulings on this matter is: the liability for compensation falls upon the person who commits a violation, and the burden of proof rests on the

one who claims that a violation has occurred. Now, is the artisan here the claimant, whose claim must be proven, or the defendant, who, according to the general principle, is considered innocent until their violation is proven?

Therefore, when breach of trust or betrayal is prevalent among artisans, the artisan is outwardly the claimant, and the responsibility of proving innocence falls upon them. On the other hand, when trustworthiness is prevalent among them, they are outwardly considered truthful until proven otherwise. Thus, under both views, there is no contradiction with the evidence. (1)

(2) Burning the Apostates:

It is narrated from Ikrimah that Ali (may Allah be pleased with him) burned a group of people. When this news reached Ibn Abbas, he said: "If it were me, I would not have burned them, because the Prophet (peace and blessings of Allah be upon him) said: 'Do not punish with the punishment of Allah (fire).' Rather, I would have killed them as the Prophet (peace and blessings of Allah be upon him) said: 'Whoever changes his religion, kill him.'" (2)

In another narration, it is mentioned: When this reached Ali, he said: "Ibn Abbas has spoken the truth." (3) In an extended narration: When this news reached Ali, he said: "Alas for Ibn Abbas!" (4)

There are two possibilities for Ali's (may Allah be pleased with him) response here:

First Point: He was not pleased with Ibn Abbas's statement and interpreted the prohibition mentioned in the Hadith as **'Tanzihi'** and **'Karaha'** (disliked/discouraged). He expressed regret toward Ibn Abbas for taking this prohibition in its literal and outward sense, whereas to Ali, the matter was not perceived that way.

(1) See: **'Nadhariyat al-Maslahah fil-Fiqh al-Islami'** by Hussain Hamid Hassan, p. 128. This answer is correct according to those jurists who believe that an employee remains liable until it is proven that they were not negligent. In such a case, the burden of proof falls upon them, whether the loss occurred at their hands or due to their actions. For those who believe that they are unconditionally

liable for what was lost at their hands, whether they were negligent or not, this does not align with their view. Because they believe that in this situation, they are unconditionally liable, and their word will not be accepted without proof.

(2) Bukhari (3017).

(3) Tirmidhi (1458), who classified it as a **Hasan Sahih Hadith**.

(4) Ahmad (2552), Abu Dawud (4351), and Abdur Razzaq (18431).

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Second Point: He said this as a mark of satisfaction and acknowledgement, and Ibn Abbas had remembered something that he [Ali] had forgotten. Consequently, this is considered a return on his part towards the opinion that it is **Haram** (forbidden). (1) And expressing surprise...

This fact proves that the news of abrogation (naskh) had not reached him. Otherwise, if he were to oppose Ibn Abbas, he would have protested against him (2).

There is also something in a narration from Tirmidhi that strengthens the second possibility.

Other Hadiths also prohibit punishment by fire. Narrated from Abu Hurairah (may Allah be pleased with him), he said: The Messenger of Allah (peace and blessings of Allah be upon him) sent us on an expedition and said: "If you find such and such person, then burn both of them with fire." Then, when we were about to depart, the Messenger of Allah (peace and blessings of Allah be upon him) said: "I had ordered you to burn such and such persons. However, no one punishes with fire except

Allah. Therefore, if you find them, kill them" (3).

Because of the prohibition regarding punishment by fire, most jurists (faqihs) have expressed the opinion that burning to death is haram (forbidden) except in cases where a person is subdued in Qisas (retribution). Ibn Qudamah said: "Once the enemy is subdued, to the best of our knowledge, it is not permissible to burn them. Although Abu Bakr Siddiq (may Allah be pleased with him) ordered the burning of individuals involved in the Ridda wars, and Khalid bin Walid did so by his order. But I do not know of any disagreement among people on this matter today" (4).

Ibn al-Munayyir has analyzed the disagreement on this matter, and then, describing the consensus (ijma), he said: "It is not permissible to kill those who are subdued by burning them—provided they can be killed by other means and they themselves have not burned any Muslim" (5).

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(1) See: Fath al-Bari 12/271 - 272.
(2) See: Al-I'tibar fi Nasikh wal Mansukh minal Athar, by Al-Hazimi, 194.
(3) Bukhari narrated this (3016).
(4) Al-Mughni 9/286 - 287; and regarding its prohibition according to the schools of law, see: Tabyin al-Haqa'iq 6/32, Hashiya Ibn Abidin 4/140, At-Tawdih fi Sharh al-Mukhtasar Ibn al-Hajib 3/422, Manh al-Jalil 3/148, Rawdat at-Talibin 10/251, Kashaf al-Qina 3/49.
(5) Al-Injad fi Abwabil Jihad 196.

For example, some scholars have described it as being Makruh (disliked). Again, its permissibility is narrated from some companions, such as Abu Bakr and Khalid ibn al-Walid (may Allah be

pleased with them).

Based on the previous discussion, it can be said that what occurred on the part of Ali (may Allah be pleased with him) was Ijtihad (independent reasoning) contrary to the Nass (explicit text). Therefore, it was a mistake for which he made an interpretation (Ta'wil); it is not included in 'Siyasa Shari'ah' (legal policy). This is because this Ijtihad was performed in the presence of the Nass. Essentially, it is prohibited to punish anyone by fire who can be captured. However, there may be scope for Ijtihad in cases where it is not possible to capture the person or in the case of Qisas (retribution), because that is not completely in conflict with the Nass.

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(3) Maintaining Equality in the Distribution of Wealth:

Abu Bakr’s (R.A.) policy regarding the distribution of wealth was to maintain equality among the people. He did not make any distinction in distribution based on excellence in Islam. This was because the reward for excellence is due in the Hereafter, while worldly wealth is merely a means used for support.

When it was demanded of Abu Bakr (R.A.) that he should make distinctions among people in distribution, he said: "The status of their excellence is with Allah. And regarding this means of livelihood, it is best to maintain equality."

Subsequently, when Umar (R.A.) came, he felt that excellence and precedence in Islam should be the basis for differentiation in distribution. He said: "No one is more entitled to this wealth than another; rather, it will be determined based on an individual's precedence in Islam, their prosperity, their sacrifice and endurance, and their needs."

(1) See: Ma'alimus Sunan 2/282. It is stated: This prohibition is not solely because it is forbidden; rather, it has been prohibited as an act of humility so that it does not appear as though creatures are being punished through Allah's wrath. See: Sharh Sahih al-Bukhari, Ibn Battal 5/172.

(2) See: Fathul Bari 6/150. Ibn Hajar has described the incident mentioned here as weak. See: Ad-Dirayah fi Takhrij Ahadithil Hidayah 2/103.

(3) Abu Ubaid narrated this in ‘Al-Amwal’ 335-A and see: ‘Al-Kharaj’ 53.

(4) See: As-Siyasa ash-Shar’iyyah 70. A similar narration has appeared with a weak chain from Abu Yusuf in ‘Al-Kharaj’ 57. Its wording is: (An individual's steadfastness in Islam, their precedence in Islam, their prosperity in Islam, their sacrifice in Islam, and their needs in Islam).

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It is narrated from Umar (R.A.) that he moved away from this policy of giving priority and said: "If I live until next year, I will unify the later people with the predecessors in such a way that they all become one and the same." (1)

Subsequently, when Ali (R.A.) assumed the responsibility of the Caliphate, he returned the matter of distribution to the method used during Abu Bakr’s (R.A.) time.

Abu Ubaid, while describing this welfare-based (Maslahat-based) difference of opinion among the Caliphs, said: "Umar’s (R.A.) initial opinion was to give priority based on precedence in Islam and contributions to Islam, and this is his famous opinion. On the other hand, Abu Bakr’s (R.A.) opinion was to maintain equality. Furthermore, things have been narrated from Umar (R.A.) that suggest a return towards Abu Bakr’s (R.A.) view. Similarly, maintaining equality has also been narrated from Ali (R.A.). And both methods have their own logical basis." (2)

For this reason, differences of opinion have arisen among scholars regarding the provision of giving priority in distributing state grants based on any factor other than public interest or necessity. (3)

Therefore, this is a welfare-oriented ijtihad (legal reasoning) in a potential area where there is no conclusive textual evidence (nass); the perspectives of the Rightly Guided Caliphs differed here, because each of them was seeking what was more beneficial.

(4) War against rebels (bughat):

One of the finest aspects of Ali (RA)'s administrative policy was his stance regarding the wars between Muslims during the incidents of fitna (civil strife) that occurred in his era.

This was a new fitna for Muslims. Ali (RA), through his rightly-guided (Rashidah) politics, clarified the Shari'ah-compliant course of action in the context of war between Muslims. His explanation was both theoretical and practical; even in the books of the jurists, the rulings on rebels have been structured based on the Sunnah of Ali (RA) (the method of fighting rebels).

(1) Abu Yusuf narrated this in 'Al-Kharaj' page 57 and Abu Ubayd in 'Al-Amwal' page 336.
(2) Al-Amwal page 336, and see: Mukhtasar al-Muzani 1/782-783, Zad al-Musafir by Ghulam al-Khallal 1/423-424, Al-Qawa'id al-Kubra 1/100.
(3) For the differences of opinion among scholars and their evidence on this matter, see: the book 'At-Tasarruf fil Mal al-Aam' written by Khaled Al-Majid, pages 59-63.

Ja'far ibn Muhammad narrated from his father, who said: Ali (may Allah be pleased with him) instructed his herald, and on the day of the Battle of Basra, he announced: A person who is fleeing shall not be pursued, a wounded person shall not be finished off, no captive shall be killed; whoever keeps his door closed is safe, and whoever lays down his arms is safe. And he did not take anything from their wealth. (1)

For this reason, Hasan ibn Ali said: **"If Ali ibn Abi Talib were not there, people would not have known how to fight against the people of the Qibla (Muslims)."** (2) It has been narrated from Ali (may Allah be pleased with him) that he said: **"Do you think that if I were absent from among the people, who among them would have acted according to this principle?"** (3)

Even a group of eminent scholars have said: **"If the war between Ali and his opponents had not taken place, the Sunnah (method) of fighting against the people of the Qibla would not have been known."** (4)

Imam Abu Hanifa said: **"(If he were not there, no one would have known what the principles of war with Muslims would be)."** (5)

These are the higher moral principles that Ali (may Allah be pleased with him) propagated and followed in practice. These are values that are extremely difficult to adhere to in a state of war; because at that time, the mind is intoxicated with the pursuit of revenge and vengeance, and the urge to vent anger is strong. For this reason, it becomes easy to violate these through injustice or by resorting to misinterpretation. Therefore, during the events of fitna (turmoil) among the Companions, this practical loyalty to these principles was a...

...an exceptional matter, which reveals their dignity, extreme caution, and firm loyalty to the laws of Islam.

(1) This was narrated by Abdur Razzaq (18549 - 18590) and Ibn Abi Shaybah (33277 - 37816).
(2) See: **Sharh Sahih al-Bukhari** by Ibn Battal, 10/17.
(3) This was narrated by Abdur Razzaq in his **Musannaf**, 10/124, Hadith No. (18573); from Ibn Jurayj, who narrated from Abu Asim al-Saqafı, who narrated from a group of shaykhs of his tribe. Due to the unknown identity of the shaykhs, this chain of narration (isnad) is weak.
(4) **Tamhid al-Awa'il wa Talkhis al-Dala'il** by Baqillani, page 547.
(5) See: **Manaqib al-Imam al-A'zam** by Muwaffaq al-Makki, 1/71; also see: **Al-Fiqh al-Siyasi 'inda al-Imam Ali ibn Abi Talib** by Qamaruzzaman Gazzal, page 538.

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Fifth Branch

Public Interest (Maslahah) in the State Policy of the Khulafa-e-Rashidin

From the political practices of the era of the Khulafa-e-Rashidin, it has become clear to us that **Maqasidi Ijtihad** (purpose-oriented legal reasoning) was present in their state policy. The scope of **ijtihad** in their jurisprudential and political perspectives was very broad; however, all this was within boundaries that did not conflict with the **nass** (the text of the Quran and Sunnah).

The core connecting link of all these political **ijtihads** is that they strive to achieve public interest (**maslahah**) without contradicting the Sharia **nass**. Anything that suggests a conflict is not actually so; rather, it is a specific branch-related issue that does not conflict with the **nass**.

In some cases, an illusion of conflict between **nass** and **maslahah** may arise, as if the Companions (Sahaba) prioritized **maslahah** over the **nass** or that they considered the perspective of **maslahah**

sufficient and adopted it as the primary basis without considering anything else. Many consider the attempts to deny this conflict as artificial explanation (**takalluf**).

If we were ignorant of the condition of the Companions, then perhaps this would be acceptable. For example, if we knew nothing about Umar ibn al-Khattab (may Allah be pleased with him) and only saw a position of his that seemed contrary to the **nass** on a specific secondary issue—in that case, it might have been possible to say that he relied on **maslahah** despite opposing the **nass**.

However, this is a flawed method in terms of perspective and analytical judgment. It is not possible to give a correct decision on these events without adequate knowledge of the state of the Khulafa-e-Rashidin and an understanding of the nature of their jurisprudence and political philosophy. Therefore, it must be remembered that acting upon the **nass**, prioritizing it, accepting it as the criterion for judgment, and avoiding opposition to it was a firm principle of the jurisprudence of the Khulafa-e-Rashidin.

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This becomes clear through the presentation of several core principles that elucidate the matter:

First Principle: Their emphasis on adhering to the Nass (the original text of the Quran and Sunnah).

One of the primary proofs of their diligence regarding the Nass in political Ijtihad is their emphasis on the necessity of following what is contained in the Book of Allah and the Sunnah of the Prophet (peace and blessings of Allah be upon him).

It is narrated from Umar (may Allah be pleased with him) that he said: "Beware of the people of Ra'y (those who follow subjective opinions)! For they are the enemies of the Sunnah; they found it difficult to memorize the Hadiths, and so they spoke based on their own opinions; thus they went astray and led others astray." (1)

In his famous letter to Abu Musa, Umar said: "Achieve deep wisdom and sound understanding regarding what is presented to you that is not found in the Quran or the Sunnah; then, compare those matters with similar ones." (2)

Second Principle: Seeking the Nass before performing Ijtihad on any incident.

It was among the judicial principles of the Rightly Guided Caliphs that they would search for a Nass or evidence before performing Ijtihad on any matter. There is much evidence for this, the most prominent of which include:

It is narrated from Qabisah ibn Dhuwayb that he said: "A grandmother came to Abu Bakr (may Allah be pleased with him) to claim her inheritance. He said: 'I find nothing for you in the Book of Allah, nor do I know of anything for you in the Sunnah of the Messenger of Allah (peace and blessings of Allah be upon him). Therefore, return for now until I consult the people on this matter.' Subsequently, when he asked the people, Mughirah ibn Shu'bah (may Allah be pleased with him) said: 'I was present with the Messenger of Allah (peace and blessings of Allah be upon him) when he granted her a sixth (one-sixth share).' Abu Bakr (may Allah be pleased with him) asked: 'Is there anyone else with you?' Then Muhammad ibn Maslamah al-Ansari (may Allah be pleased with him) stood up and provided testimony similar to what Mughirah ibn Shu'bah had said. As a result, Abu Bakr (may Allah be pleased with him) implemented that for her." (3)

And Umar (may Allah be pleased with him) said regarding the fire-worshippers (Majus): "I do not know how to deal with them." Then Abdur Rahman ibn Awf (may Allah be pleased with him) informed him—

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(1) Ibn Abd al-Barr narrated this in the book 'Jami' Bayan al-Ilm wa Fadlihi' (2/1042), and Ibn al-Qayyim declared it Sahih (authentic) in the book 'I'lam al-Muwaqqi'in' (1/44).

(2) Al-Bayhaqi narrated this in 'As-Sunan al-Kubra' (20377).

(3) Abu Dawud (2894), Tirmidhi (2100), and Ibn Majah (2724) narrated this.

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According to the Hadith: Follow the practice (of conduct) of the People of the Book with them. (1)

Umar (may Allah be pleased with him) said: "O people! I wish that the Messenger of Allah (peace and blessings of Allah be upon him) had left us with clear rulings on three matters that we could have relied upon definitively. They are: the inheritance of the grandfather, the **Kalalah** (inheritance of a deceased person with no surviving parents or children), and certain types of **Riba** (usury/interest)." (2)

Umar (may Allah be pleased with him) also said: "I adjure in the name of Allah any person who has heard anything from the Prophet (peace and blessings of Allah be upon him) regarding the fetus." Then Hamal ibn Malik ibn An-Nabighah stood up and said: "I was between two neighbors (wives). One of them struck the other with a stick (or a tent pole), causing her to miscarry. The Messenger of Allah (peace and blessings of Allah be upon him) ruled that a slave or a slave girl (**Ghurrah**) be given in compensation." Umar said: "If we had not heard this narration, we might have decided this matter differently." (3)

It is narrated from Ibn Sirin that he said: "No one was more fearful of issuing a ruling on unknown matters than Abu Bakr (may Allah be pleased with him), and after Abu Bakr, no one was more

fearful than Umar (may Allah be pleased with him). When a matter requiring a ruling came to Abu Bakr and he found no basis for it in the Book of Allah or any narration in the Sunnah, he would exercise **Ijtihad** (independent reasoning) based on his own judgment. Then he would say: 'This is my opinion. If it is correct, it is from Allah, and if it is wrong, it is from me, and I seek Allah's forgiveness'." (4)

Narrated from Maymun ibn Mahran, who said: "Whenever a case for judgment was brought to Abu Bakr As-Siddiq (may Allah be pleased with him), he would consult the Book of Allah the Almighty. If he found something there to make a decision, he would judge accordingly. If he did not find it in the Book of Allah, he would consult the Sunnah of the Messenger of Allah (peace and blessings of Allah be upon him). If he found something there to make a decision, he would judge accordingly. If he was unable to find it there (in the Sunnah), he would ask the people: 'Do you know if the Messenger of Allah (peace and blessings of Allah be upon him) gave a ruling regarding this?' Sometimes a group of people would stand up and say: 'He gave such and such a ruling in this matter.' If he still could not find a Sunnah established by the Prophet (peace and blessings of Allah be upon him), he would gather the prominent individuals and consult with them. When they reached a consensus on a matter, he would rule according to it. Umar (may Allah be pleased with him) also acted in the same manner. And when he was unable to find it in the Book..."

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(1) Malik narrated this in **Al-Muwatta** (2/395) and Al-Bayhaqi in **As-Sunan al-Kubra** (18654). It is also narrated in **Sahih al-Bukhari** (3166). Umar (may Allah be pleased with him) did not accept **Jizya** from the Magians until Abdur Rahman ibn Awf testified that the Messenger of Allah (peace and blessings of Allah be upon him) had accepted it from the Magians of the Hajar region.

(2) Narrated by Bukhari (5568) and Muslim (3032).

(3) Narrated by Abu Dawood (4572).

(4) See: **I'lam al-Muwaqqi'in** 1/43.

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The Sunnah was this: was there any ruling from Abu Bakr (RA) regarding this matter? If there was a ruling from Abu Bakr, he would decide based on it. Otherwise, he would gather the wise scholars of the community and consult with them. When they reached a consensus on any matter, he would then decide based on it. (1)

And when Umar (RA) sent Shuraih as the judge of Kufa, he told him: "Decide according to what is clear to you in the Book of Allah and do not ask anyone anything regarding that. And if it is not clear in the Book of Allah, then follow the Sunnah of the Messenger of Allah (SAW). And if it is not clear even in the Sunnah, then exercise your own reasoning and perform Ijtihad." (2)

Third Principle: Adhering firmly to the guidance of the Nass (Original Text).

Another of the uncovering principles is—welfare-oriented Ijtihad does not oppose the Nass. The Caliphs remained extremely firm and unwavering toward whatever was manifest to them through the guidance of the Nass. This means that their Ijtihad could not overstep the Nass. An example of this is:

— The difference of opinion between Abu Bakr and Umar regarding the war against the apostates. Umar (RA), adhering to the broad meaning of the Hadith, said to Abu Bakr (RA): "How can you fight against people when the Messenger of Allah (SAW) has said: 'I have been commanded to fight against people until they say—there is no deity worthy of worship except Allah. So whoever says—there is no deity worthy of worship except Allah, his wealth and life are safe from me, except for its right; and his account is with Allah?'" Then Abu Bakr (RA) said: "By Allah! I will surely fight

against the person who distinguishes between Prayer (Salah) and Charity (Zakat). For Zakat is the right of wealth. By Allah! If they refuse to give me even a camel's hobble which they used to give to the Messenger of Allah (SAW), I will fight against them for that refusal." Umar (RA) said: "By Allah! I saw that Allah Almighty had opened Abu Bakr's heart for the decision of war, so I realized that this was indeed the truth." (3)

Therefore, remaining unwavering on the Nass was the driving force for both in their initial difference of opinion. Subsequently, Umar (RA) followed Abu Bakr's opinion when its correctness became manifest to him.

— Abu Bakr (RA)'s firmness regarding the dispatching of Usama's army in order to follow the command of the Prophet (SAW).

(1) See: I'lam al-Muwaqqi'in, 1/49-50.
(2) See: I'lam al-Muwaqqi'in, 1/50.
(3) Narrated by Bukhari (7284) and Muslim (20).

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– Abu Bakr’s (may Allah be pleased with him) firm adherence to the non-distribution of the Prophet’s (peace and blessings of Allah be upon him) inheritance; it is narrated from Aisha (may Allah be pleased with her) that after the passing of the Messenger of Allah (peace and blessings of Allah be upon him), Fatimah, the daughter of the Messenger of Allah (peace and blessings of Allah be upon him), requested Abu Bakr as-Siddiq for her share of the inheritance from the wealth

left by the Messenger of Allah (peace and blessings of Allah be upon him), which Allah had granted to the Messenger as Fai (wealth acquired without fighting). Then Abu Bakr said to her: The Messenger of Allah (peace and blessings of Allah be upon him) said: "We have no heirs; what we leave behind is Sadaqah (charity)." Fatimah (may Allah be pleased with her), the daughter of the Messenger of Allah (peace and blessings of Allah be upon him), became angry at this and stopped talking to Abu Bakr; she did not speak to him until her passing (1).

Fatimah's dissatisfaction and her avoidance of Abu Bakr was not an easy matter for Abu Bakr (may Allah be pleased with him). This is because she was the daughter of his most intimate friend (the Prophet). And she was the person for whom gaining her satisfaction and maintaining her goodwill was most dear to Abu Bakr. Undoubtedly, this situation was very difficult for him. For this reason, he addressed Ali (may Allah be pleased with him) and said: "By Him in whose hand is my soul! Maintaining good relations with the relatives of the Messenger of Allah (peace and blessings of Allah be upon him) is dearer to me than maintaining good relations with my own relatives" (2). However, following the decree of the Messenger of Allah (peace and blessings of Allah be upon him) was an expression of Abu Bakr's (may Allah be pleased with him) firm resolve and patience; and in this regard, he expressed through this statement: "I will not omit anything that the Messenger of Allah (peace and blessings of Allah be upon him) used to do; for I fear that if I were to omit anything from his instructions, I would go astray" (3).

– Another example of Umar’s (may Allah be pleased with him) firmness regarding Nass (divine textual evidence): He used to punish those who opposed the instructions of the Prophet (peace and blessings of Allah be upon him), even if the matter had scope for explanation. He would strike people for performing voluntary (Nafal) prayers after the Asr prayer. It is narrated from Anas (may Allah be pleased with him), who said: "Umar used to strike (people’s) hands for praying after the Asr prayer" (4).

Fourth Principle: Their return from opinions contrary to the Nass.

This is a fundamental principle that clarifies the boundaries of the political Ijtihad of the Rashidun

Caliphs. They would perform Ijtihad within the limits of the Nass; then, when it became clear to them that their words were contrary to the Nass, they would turn back from it.

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(1) Narrated by al-Bukhari (3092) and Muslim (1759).

(2) Narrated by al-Bukhari (3712) and Muslim (1759).

(3) Narrated by al-Bukhari (3092) and Muslim (1759).

(4) Narrated by Muslim (836).

Narrated by Sa'id, who said: (Umar ibn al-Khattab used to say: The *diyat* (blood money) belongs to the '*aqila*' (paternal relatives), and a wife inherits nothing from her husband's blood money. Eventually, Dahhak ibn Sufyan told him: The Messenger of Allah (peace be upon him) wrote to me that I should give the wife of Ashyam ad-Dubabi a share from her husband's blood money. Then Umar retracted his opinion). (1)

This was a common occurrence in the *ijtihads* (legal reasonings) of Umar (may Allah be pleased with him); indeed, many such incidents occurred where he abandoned his own *ijtihad* and returned to the Sunnah. (2)

A noteworthy point here is that no *fatwa* is preserved from Abu Bakr (may Allah be pleased with him) that contradicted any evidence and from which he later retracted. Ibn Taymiyyah said: (It is not known that he made a mistake in any matter of Sharia or made any *ijtihad* contrary to evidence, which is different for others. For others have some *ijtihads* that are found to be contrary

to some evidence, and there are also issues where they paused and were unable to determine the ruling). (3)

And this matter of retracting (when a mistake was perceived) was also clear in the conduct of other companions. An example is:

Narrated by Tawus, who said: (I was with Ibn Abbas when Zayd ibn Thabit said: Are you giving this *fatwa* that a menstruating woman can depart before completing the final encounter with the House (the Farewell Tawaf)? Then Ibn Abbas said to him: If you do not believe me, ask such-and-such Ansari woman whether the Messenger of Allah (peace be upon him) gave her such an instruction. The narrator says: Then Zayd returned to Ibn Abbas laughing and saying: I see that you have indeed spoken the truth). (4)

This is a well-established principle: (Similarly, it applies to all incidents involving the Noble Companions (may Allah be pleased with them) that whenever they began to perform *ijtihad* and came to know of a *nass* (textual evidence) or proof, they would immediately refrain from personal opinion and adhere to the report narrated from the Messenger of Allah (peace be upon him)). (5)

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(1) Abu Dawood (2927) and Tirmidhi (1415) narrated this, and he (Tirmidhi) said: This is a *hasan sahih* hadith, and the practice of the people of knowledge is based on it.
(2) Sheikh Muhammad at-Tawil (may Allah have mercy on him) has compiled more than 31 instances of Umar's *ijtihad* contrary to evidence in his book 'Manhajiyatu Umar fil Ijtihad Ma'an Nass', see: pages 64-89.
(3) Ar-Radd 'alas Subki 2/632.
(4) Muslim (1328) narrated this.
(5) Matali'ut Tamam, lish-Shamma 95.

Relationship between political ijtihad and Sharia evidence in the biography of the Rashidun Caliphs:

The principles of obedience to the commands of *nass* (Sharia text) discussed earlier clarify for us the boundaries of Rashidun political *ijtihad*. It is a consideration based on public welfare that does not contradict the *nass*. This *ijtihad*...

...It is extremely broad as long as it is not in conflict with the scriptural text (*nass*). Essentially, it is a path between two schools of thought:

First path: Those who exaggerate in the consideration of public interest (*maslahah*) to such an extent that it oversteps the bounds of opposing the scriptural text. As a result, they fail to perceive the text and understand its true essence.

Second path: Those who go to such extremes in adhering to the scriptural text that they disregard the consideration of public interest.

The political *ijtihad* (legal reasoning) of the Rightly Guided Caliphs was broad, but it remained within the limits of legitimate consideration. Their *ijtihad* in the field of political perspectives did not fall outside any of the following recognized paths:

First path: Exercising *ijtihad* on a matter for which there is essentially no scriptural text. For example: the compilation of the Quran during the reign of Abu Bakr (RA), or the nomination of a successor (*istikhlaf*) during the reigns of Abu Bakr and Umar (RA).

Second path: When the scriptural text allows for multiple meanings or interpretations, adopting

one acceptable interpretation from among them. For example: Umar (RA) choosing not to distribute conquered lands but keeping them as an endowment (*waqf*) for the Muslims; Uthman (RA) impounding stray camels; and Ali ibn Abi Talib (RA) ensuring the liability of common laborers (*al-ajeer al-mushtarak*).

Third path: Adopting a recognized method that does not conflict with the directives of the scriptural text, but rather upholds an acceptable principle of public interest. This can be done in several ways:

Firstly: Guidance and advice; such as Umar (RA)'s prohibition regarding marrying women from the People of the Book. According to this view, it was by way of advice to them. The method of giving advice is not contrary to any permissible (*mubah*) matter.

Secondly: Restricting permissible matters in case of necessity; for example, the prohibition of marrying women from the People of the Book based on the view that it was related to a specific, exceptional situation. Here, the permissible matter was restricted for the sake of greater public interest. Restricting a *mubah* or permissible matter does not conflict with the directives of the scriptural text.

Thirdly: Adopting penal and disciplinary measures for the sake of reliable public interest (*maslahah*); for example—increasing the punishment for wine consumption, and effecting a divorce if someone is defiant in fulfilling the Sharia-mandated or obligatory requirements of marriage.

Fourthly: Adopting flexibility in the means used to uphold the core objective (*maqasid*). For example—accepting payment from the Banu Taghlib without mentioning the name '*jizya*'. This is

an acceptable method and is not considered contrary to the scriptural text or textual evidence. Because not calling it *jizya* does not change its legal ruling.

Therefore, these are acceptable paths that do not conflict with the scriptural text and involve the implementation of reliable principles related to public interest (*maslahah*).

Fourth course of action: Giving precedence to whichever is stronger during a conflict. This essentially involves giving priority to one piece of evidence over another. For example—Umar (RA)'s prohibition of Hajj al-Tamattu'; according to this view, he [intended to preserve the sanctity of the] Haram (Sacred...

...area) he did this out of fear of the area becoming depopulated or so that the rulings of Ifrad and Qiran Hajj would not be forgotten. This type of step essentially falls under the category of prohibiting a permissible matter to prioritize a more significant Sharia interest. Similarly, in the era of Uthman (RA), the unification of the Quran into one harf (reading style) was done; because the importance of removing dispute, disagreement, and aversion towards the religion was immense.

Fifth Plan of Action: Taking into account the absence of conditions or the presence of obstacles in making any ruling effective. For example—suspending the penalty for theft during a year of famine. And the issue of inheritance for a divorced wife whose husband is on his deathbed can also be included under this; because an obstacle has been created in the implementation of that divorce.

Therefore, the Ijtihad of the noble Companions was a clear implementation of public interest (Maslahah) within the boundaries of the Nass or textual evidence. Sharia limitations were not

ignored here to purely favor public interest. Thus, it should not be assumed that when the Rightly Guided Caliphs adopted public interest as evidence in these events, they did so without regard for the opposition of the Nass or textual evidence. Rather, they were such scholars who were fully aware of the boundaries of the Nass. As a result, they knew that this public interest was not in conflict with the Nass; because they were enriched with knowledge of the Book and Sunnah. In essence, public interest or Maslahat Shari'a (Lawgiver's) textual evidences can provide inspiration for Ijtihad and deep reflection; it is not such that it will be accepted without knowing whether it conflicts with any textual evidence.

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Principles of Acceptable Ijtihad in the Application of Public Interest (Maslahah):

Therefore, Maslahah-based Ijtihad is acceptable and has an impact on rulings; however, for this, an action plan capable of reaching a correct and desired goal is necessary. And this action plan must follow several principles:

First Principle: The recognition or consideration of the Sharia for this Maslahah; that is, has the Sharia considered the Maslahah being taken into account in the Ijtihad, or has it remained silent on that matter, or has it rejected it?

Second Principle: The criterion of the Sharia importance of the Maslahah; is this importance so strong that it reaches the 'Essential' (Daruri) level, or is it at the 'Needful' (Hajiyat) level, or some other level below it?

Third Principle: What is the meaning of the Nass or original text and what is its purpose? Before discussing the conflict between Maslahah and Nass, the Nass must be understood very well.

Fourth Principle: The nature of the conflict between the Maslahah and the Dalalat or indication of the Nass; is this conflict definitive (Qat'i) or speculative (Zanni)? And is it present from all perspectives?

Fifth Principle: The nature of Ijtihad in resolving the conflict.

Based on the above discussion, it can be said that misunderstanding the Nass or limitations in comprehending the limits of Maslahah and its application leads people into quite a few errors. These errors mainly occur due to the negligence of one or more of the above five principles. We can identify those errors as follows:

First Error: Accepting those matters as Maslahah which the Lawgiver of Sharia did not consider as Maslahah.

That is, bringing forth a Maslahah (public interest) that is not part of the fundamental Maslahahs of the Shariah, and then seeking to apply it in opposition to the Nass (scriptural text). In Maslahah-based thinking, this is an erroneous path.

An example of this is imposing conditions on the implementation of the Hadd (prescribed punishment) for theft under the pretext of considering some baseless Maslahahs.

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For instance, someone might impose conditions such as requiring that social prosperity must be achieved or that a just society must exist to prevent deviations in the application of the Hadd for theft. These are "benefits" (Maslahahs) that the Shariah did not consider relevant when imposing this punishment. Therefore, this is not Maslahah-based Ijtihad (independent reasoning), nor is it correct to call such matters Maslahah-based Ijtihad. This is because it considers relevant

something that the Legislator (Shari') did not consider relevant. Consequently, it is an Ijtihad that contradicts Shariah-based Maslahah.

Second Error: Ignoring what the Legislator has considered relevant.

This involves adopting a Maslahah-based perspective that seeks to consider benefits that the Shariah has specifically ignored and invalidated. As a result, one seeks to implement these and make them the specifiers or exceptions to the definitive rulings (Nass) of the Quran and Sunnah. For example, if someone calls for the abandonment of the mandatory Shariah Hijab under the pretext of ease for women, or seeks to expand the concept of Hijab in a way that violates Shariah boundaries.

And this is a so-called benefit (Maslahah) that the Shariah has rendered ineffective or void. This is because the Legislator has made Hijab obligatory in the very circumstances where they seek relaxation for women. Therefore, there is no unavoidable necessity (Darurat) or special need (Hajat) there; rather, the ruling was made mandatory despite the existence of the natural hardship that exists.

Included in this is: providing equality between men and women in inheritance under the consideration of Maslahah to maintain justice or remove harm from women. Through this, the inequality that the Legislator has considered here is ignored, and no regard is given to it.

Among the extreme examples of this in the current era is: giving permission not to fast during the day in Ramadan for the purpose of gaining strength for work. Whereas the Legislator has intended the observance of the fast specifically during this time, regardless of whether the person is busy with any work or activity. In such a situation, it invalidates the Legislator’s consideration and shows no concern for it.

In addition, there are many other examples that aim for such Maslahahs which the Shariah has declared void. Therefore, it is not part of an acceptable Maslahah-based perspective.

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(1) Note: Min Huna Nabda, Khalid Muhammad Khalid, page 182.

(2) Note: Ruhul Islam, Jamal al-Banna, page 159.

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Third error: Deficiency in understanding the Nass (original text).

This creates an illusion of contradiction between the **Nass** and **Maslahat** (public interest). Consequently, such contradictions arise due to a weakness in understanding the **Nass**.

Included in this is the claim of contradiction regarding the **Ijtihad** of Umar (may Allah be pleased with him), where he suspended the share of the 'Mu’allafat al-Qulub' (those whose hearts are to be reconciled to Islam). They believe this to be an instance of Umar (may Allah be pleased with him) abandoning the practice of a **Nass**; whereas it was Umar’s responsibility to distribute Zakat, but he discontinued it based on his own **Ijtihad**.

The actual error lies in the inability to understand the **Nass**. As a result, the idea has been formed that providing the share for the 'Mu’allafat al-Qulub' is obligatory for the Imam in all eras and all places. When they saw that Umar (may Allah be pleased with him) did not act upon it, they considered it as a means of weakening the **Nass**. However, the correct **Fiqh** (understanding) of the **Nass** is that the portion for the 'Mu’allafat al-Qulub' is associated with the rationale (**'Illah**) of reconciling their hearts toward Islam. Whether we consider it current or abrogated, it is linked to a specific cause and is not inevitable or obligatory for all times and all places.

Fourth error: Adding to or subtracting from what the Shari' (the Lawgiver) has established.

This includes calling for the violation of certain Shariah provisions under the pretext of freedom. For example—granting recognition to the freedom to become an apostate or leave Islam for another religion, or the freedom to propagate opinions—no matter how reprehensible—or the freedom of deviant behavior; with the claim that these are part of the freedom which Shariah came to establish.

In fact, the Lawgiver has given importance to freedom, but this excess or increase is not part of Shariah-compliant freedom; rather, it is freedom influenced by different ideologies. Therefore, the **Maslahahs** (interests) must be considered in light of the Shari's perspective; they cannot be changed through reduction or addition.

Fifth error: Abandoning the application of all Maslahahs (interests).

This occurs when someone harbors the notion that it is impossible to harmonize various interests. As a result, they abandon some Shariah provisions on the pretext of contradiction with others, whereas it was possible to act upon both interests simultaneously.

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Chapter Four

Principles of Sharia-based Governance

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It is desirable here to distinguish between the principles (Usul) of Sharia-based politics and the rules (Qawa'id) of Sharia-based politics. By the principles of Sharia-based politics, those evidences are meant which determine the legitimacy of such politics and establish that the Sharia has accepted it. These principles have been discussed previously in the ninth introduction; these are the evidences through which arguments are presented in favor of the legitimacy of this politics.

And by rules, I mean those matters upon which reliance is placed during the application of Sharia-based politics. These are the means used for the purpose of achieving public interests related to Sharia-based politics. These are not proofs of the legitimacy of Sharia-based politics like the aforementioned principles; rather, these are certain rules that the Sharia has indicated as acceptable and which serve as a foundation in practice.

When we reflect on these types of rules upon which Sharia-based politics depends, then we [categorize] them into five rules

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We can summarize them as follows:

1. The legitimacy of restricting permissible (mubah) matters.

2. Resolution of disagreements by the ruler.

3. Linking the ruler's actions to the public interest.

4. The legitimacy of establishing a balance between benefit and harm.

5. The authority to compel through governing power.

The detailed description of each rule is as follows:

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First Principle

The legitimacy of restricting permissible (mubah) matters

One of the important principles included in Siyasah Shar'iyyah (Sharia-based governance) and an influential tool in the field of jurisprudential-political discourse is the legitimacy of restricting permissible matters.

The purpose of this principle is that the ruler, for the sake of a reliable public interest (maslahah), may impose restrictions on certain mubah or permissible matters for a specific period and refrain the general public or a portion of them from it.

An important question arises here: How can a ruler forbid people from something that Allah has made mubah or permissible?

The answer is: Restricting a permissible matter does not essentially revoke the original legitimacy, nor is it in conflict with it. There are two reasons for this:

First reason: It is established upon certain Sharia principles that determine the legitimacy of imposing such restrictions. Therefore, it is a Sharia-compliant ijtihad (legal reasoning), and following it is equivalent to following the rulings of the Sharia itself.

Second reason: This restriction is associated with a specific temporary and practical issue, which does not revoke the original legitimacy. Rather, it merely imposes restrictions regarding a specific time, place, or person. It does not holistically revoke the primary foundation of the matter being mubah, and it does not interfere with the original ruling (asl hukm).

Therefore, this prohibition is related to a special circumstance which is considered an exception to the general ruling. The reason is a sudden public interest that did not exist at the time of the original legitimacy. It considers a factor for which the original ruling of legitimacy was not meant to be revoked, and this consideration does not negate the original legitimacy.

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Evidence supporting the legality of limiting permissible (mubah) matters:

Several Sharia principles indicate the consideration of this principle, including:

First Principle: The provision regarding limiting the use of permissible (mubah) matters on the condition of 'not causing harm'.

In several provisions of the Quran, permissibility has been limited on the condition of 'not causing harm', which include:
- Limiting the husband's right to take back his wife: "And do not keep them, intending harm, to transgress [against them]." [Al-Baqarah: 231]
- Limiting the right of a deceased person to make a will: "...after any bequest [he made] or debt, as long as there is no harm [caused]." [An-Nisa: 12]

Therefore, this is a principle that limits permissible matters on the condition that no harm is caused. If harm is involved, there is no scope to perform that permissible act. The principle of limiting permissibility is founded upon such examples. That is, in the presence of any harm or public interest (maslahah), it removes a portion of permissibility from the sphere of general

permission.

Thus, permissibility is legally limited by the condition of not causing harm. This belongs to the category of Sharia provisions formulated to achieve public welfare. Therefore, it must remain within the bounds of welfare determined by Sharia. If those bounds are transgressed due to the intention of the performer, or due to the harm resulting from it, then it must be prevented. From this very principle, the famous doctrine regarding the 'abuse of rights' (al-ta'assuf fi isti'mal al-haqq) has been derived (1).

Second Principle: Provision regarding the command to obey the Ulu al-Amr (authorities).

This provides evidence for obeying them in righteous deeds, which is a general command and includes such matters as well.

Third Principle: Provision regarding limiting permissible matters in the Sunnah of the Prophet (Sallallahu Alaihi Wa Sallam):

(1) See: 'Abuse of Rights', page 270; and Al-Duraini's 'Rights and the Scope of State Power in Limiting Them', pages 222-224. For detailed evidence of this principle, see: 'Abuse of Rights', pages 97-230; Tariq Bikri's 'Consistency with the Intent of the Lawgiver and its Opposite', pages 233-243.

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Included are:

- Prohibition regarding storing Qurbani meat:

Narrated from Aisha (RA), she said: (During the time of the Messenger of Allah (PBUH), some people from rural areas came to the locality during the time of Qurbani. Then the Messenger of Allah (PBUH) said: "Store (the meat) for up to three days, and then donate whatever remains." A short while later, they said: "O Messenger of Allah! People are making water-skins from the skins of their sacrificial animals and carrying melted fat in them." The Messenger of Allah (PBUH) asked: "What is the matter with that?" They said: "You had forbidden eating Qurbani meat after three days." He replied: "I only forbade you because of the arrival of those needy people who came (seeking food). So now, you may eat, store, and give in charity!")

- Reserved Grazing Land (Hima):

Narrated from Ibn Abbas (RA): (Sa'b ibn Jaththama said: The Messenger of Allah (PBUH) has said: "No one has the right to declare a grazing land as reserved except Allah and His Messenger.")

Imam Zuhri says: (Information has reached us that the Prophet (PBUH) declared a place called 'Naqi' as reserved grazing land, and Umar (RA) declared two places named 'Saraf' and 'Rabazah' as reserved.)

The core point of evidence from these two Hadiths is—following the Prophet (PBUH) in instances where a permissible (mubah) matter was restricted for a specific reason. This serves as proof for the legitimacy of restricting a permissible matter (for special needs).

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(1) Imam Bukhari (5423) and Imam Muslim (1971) narrated this. There is a difference of opinion among scholars as to whether this prohibition is still in effect. According to the majority of scholars, it is abrogated (Mansukh); currently, storing meat is permissible (Mubah), and

prohibiting it in such situations is not appropriate. However, in the opinion of some scholars, it is not abrogated but falls under suspended rulings (Munsa). That is, if a situation of need arises similar to what was seen during the time of the Messenger of Allah (PBUH), the provision to prohibit storage will become effective again. See: Ash-Shafi'i's 'Ar-Risalah' 234, 'Sharh Ma'ani al-Athar' 4/187, Makki bin Abi Talib's 'Al-Idah li-Nasikh al-Qur'an wa Mansukhuhu' 116/16, 'Al-Hawi al-Kabir' 15/116, 'Al-Muntaqa Sharh al-Muwatta' 3/94, Ibn Battal's 'Sharh Sahih al-Bukhari' 6/31, 'Al-Mufhim lima Ashkala min Talkhisi Muslim' 5/379.
(2) Imam Bukhari (2370) narrated this.

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Fourth Principle: Politics of the Khulafa-e-Rashidin.

This includes the steps taken by Umar ibn al-Khattab (RA) regarding the determination of reserved grazing land (Hima). It is narrated from Umar ibn al-Khattab (RA) that he appointed a freed slave named 'Hani' to be in charge of the reserved grazing land and said: "O Hani! Restrain your hand from the Muslims (meaning, be kind to them), and fear the curse of the oppressed. For the prayer of the oppressed is accepted. And grant permission to the owners of small numbers of camels and sheep to enter (the grazing land). However, beware of the livestock of Ibn Awf and Ibn Affan; for if their livestock are destroyed, then they their..."

...they will be able to return to their date palm gardens and cultivated lands. But if the animals of

the owners of those few camels and goats are destroyed, they will come to me with their children and say: "O Commander of the Faithful! Will you leave us in a helpless state?" Yet providing them with water and grass is easier for me than donating gold and silver. By Allah! They certainly think that I have committed injustice against them. But this is their land, for which they fought in the pre-Islamic era (Jahiliyyah) and have remained firm on it during the Islamic era as well. By the Being in whose hand is my life! If it were not for those four-legged animals (horses and camels for Jihad) upon which I ride to engage in Jihad in the path of Allah, I would not have preserved even a span of their land." (1)

Imam Muzani says: By Allah! This is such a pure statement that whoever hears it will think that he too is capable of saying such a thing, but when he tries to do it, he will find himself incapable. (2)

A great aspect of state administration is inherent in this: justice has been shown to everyone, and then the circumstances have been taken into account in the application of rules so that they become equitable. There is also this lesson in it: wealth belongs to the Muslims, and any step taken in this regard must be for their welfare.

Fifth Principle: It is impossible to achieve the objectives of the Shariah in governance and fulfill the responsibilities assigned to the ruler without regulating "mubah" (permissible) matters.

Therefore, it is impossible to equip an army or protect rights without specifying and limiting absolute or general matters, and without making mandatory that which was essentially not required. This is the core concept of "Taqyeed" (regulation) or control. (3)

(1) Imam Bukhari has narrated this (3059).
(2) Mukhtasar al-Muzani 1/679.
(3) For detailed evidence on limiting "mubah" or permissible matters, see: "Taqyeed al-Mubah" by Al-Husain al-Mus, pages 57-71 and 207-220; "Sultat al-Waliyyil Amri fi Taqyeed al-Mubah" by Bashir al-Makki, pages 157-184.

In describing the opinions of the scholars regarding the obligation to perform "mubah" (permissible) acts, Alusi said: (And will it include matters that are mubah? There are differing opinions on this. Some have said: Obedience to them (the rulers) in this matter is not mandatory; because it is not permissible for anyone to make forbidden what Allah has made permissible, or to make permissible what Allah has made forbidden. Conversely, it has been said: This will be mandatory, as Haskafi and others have clearly mentioned. A research scholar of the Shafi'i school said: The Imam's command and prohibition must be obeyed as long as he does not order anything forbidden. Some of them have said: What appears to be the case is that obedience to him is mandatory only outwardly in matters where he has given a command but no public interest is involved (1); however, where public interest is involved, the matter is different, and in that case, it becomes mandatory internally as well (2)).

Furthermore, the matter of absolute prohibition is problematic; because general authority over the Muslims (Wilayah al-Ammah) cannot be conceived without imposing regulations on mubah matters. Moreover, the jurists mention that obedience must be rendered in matters other than the forbidden, and this includes the mubah; rather, they have clearly expressed opinions regarding mubah matters as well (3).

Perhaps this difference of opinion does not apply to such scenarios, such as ordering a mubah act to be performed; nor is it applicable in the case of prohibiting a mubah matter for the sake of public interest.

Essential Conditions for Restricting Permissible (Mubah) Matters:

To ensure that such restrictions remain within the scope of Shariah considerations, it is necessary to have certain conditions, which are as follows:

First condition: The permissible (Mubah) matter must be suitable for restriction. Therefore, any permissible matter that does not involve the rights of others is not suitable for restriction; however, matters involving the rights of others are an exception. Similarly, any permissible matter that is of universal necessity (Umum al-Balwa) cannot be restricted either.

(1) There is extensive use of this type of terminology among the jurists (faqihs). The purpose of this is to avoid the harm that may arise from non-compliance. Consequently, it is adhered to for the sake of preserving life and preventing greater harm. See: Rasa'il Abi Ali al-Yusi 1/225.
(2) See: Ruh al-Ma'ani 3/65; and see: Hashiyat al-Shirwani 3/70.
(3) See: Tuhfat al-Muhtaj ma'a Hashiyat al-Shirwani 3/71; Sharh Mukhtasar Khalil 8/60; Mawahib al-Jalil 6/297; and see the upcoming chapter on the practical discussion regarding the rulings and impacts of recommended (Mustahabb/Mandub) matters.

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...so that people do not face severe hardship in refraining from it; rather, the restriction of permissibility (Mubah) should apply to matters that involve the rights of people, and where restraining people from them serves the public interest, yet they do not have an acute need for it.

Second condition: Some harm must result from either adopting or abandoning the permissible matter.

Third condition: It must be temporary or transient.

Fourth condition: It must be for a Shariah purpose that does not conflict with another more

powerful matter (1).

Applications of Restricting Permissible (Mubah) Matters:

We can select some applications in the context of restricting permissible matters and discuss those that warrant discussion. Among these applications are:

(1) Prohibition of Polygamy:

Shariah has declared polygamy permissible in marriage. Almighty Allah says: "...marry those that please you of women, two or three or four" [Surah An-Nisa: 3]. In our current age, there is much discussion and review regarding polygamy. Some people have raised objections to the basic Shariah ruling based on various harms perceived by them, and as a result, they have misinterpreted the Shariah proofs. We have no discussion with them here.

The issue that demands presentation here is: According to the principle of "restricting permissible matters," would it be valid to restrict polygamy?

Among contemporary scholars, some have expressed the opinion that this restriction is correct. They have stated: Polygamy is essentially permissible,

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But in our age, such oppression is observed in this regard that what the Legislator has made mandatory is not being preserved, and as a result, matters such as the destruction of families, the alienation of children, and divorce at an alarming rate are occurring, which makes the legality of limiting a permissible matter for the sake of some compelling public interest inevitable. And this would be included under 'Siyasah Shar'iyyah' (Shar'i administrative policy).

(1) Regarding the conditions, see: 'Taqyid al-Mubah' 247-253; 'Sultat Wali al-Amr fi Taqyid

al-Mubah’ 201-229; ‘Dawabit Salahiyyat Tasarruf al-Imam fil Ilzam bil Ibahah’, Hasan Hindawi 351-360; an authorized research article published in ‘Majallat al-Adl’, Issue 66, Dhul-Qi'dah 1435 Hijri.

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Some contemporary scholars have refuted this view by stating that polygamy is a matter that has been made Sharia-compliant through the definitive text of the Quran. And such matters are not subject to any limitation or regulation; rather, regulation is applicable only to those permissible matters whose legality has been proven through general evidence.

In my view, this answer is not correct; because even that which has been permitted by specific text or evidence can be regulated. However, the core subject of discussion is: will every claim of regulation be acceptable?

Therefore, limiting polygamy in this manner is a wrong opinion. Because it is not permissible to limit an authorized matter here. The harms they mention are already present within the original source or framework of the legality of polygamy. Consequently, their imposition of this limitation rejects the core principle of the original permission. Yet, Allah Almighty has made polygamy Sharia-compliant due to the significant benefits present in it, even though the Creator knew that some harms might be associated with polygamy. Therefore, what they are mentioning are harms already present within the basic framework of polygamy. In reality, they are limiting the original Sharia permission granted by the Creator, while there is no such exceptional situation before us that demands the imposition of any blanket limitation.

Yes, if we assume for the sake of argument that a group lives in a specific small village among whom the rate of polygamy is excessive and oppression and transgression in their polygamy have become prevalent, then it can be said that it is permissible for the ruler to restrict the opportunity for polygamy in their case. However, this is not a blanket restriction; rather, it is limiting polygamy

on the condition that it must be completed through the judiciary or imposing certain conditions that will ensure they are not violating the rulings of Sharia. This would be included in an exceptional situation that is not contrary to the original permission. ‘Sharia-compliant administrative policy’ is effective within these boundaries. But imposing a blanket ban for all people of the country on the pretext of some such harms is essentially equivalent to making forbidden (haram) what Allah has made permissible (halal), which is in no way included in Sharia-compliant administrative policy.

An example of this is, if someone tries to ban meat consumption blanketly on the pretext of harm caused by consuming meat or for the purpose of certain economic benefits and enacts a law on the argument that the Prophet (PBUH) had forbidden the companions from storing sacrificial meat for more than three days, considering the needy who arrived in Medina. However, this would be making forbidden what Allah has made permissible. There is no connection with the mentioned Hadith here; rather, the scope of implementing the Hadith is correct only when...

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...a narrow and restricted situation, such as if hunger, poverty, and famine were to spread in a country and a just ruler wished to impose restrictions on the consumption of meat until this need was alleviated, the matter could be considered in this context. This is not making meat absolutely forbidden (haram).

(2) Compulsory medical examination before marriage:

The principle is that as soon as the husband and wife wish, after fulfilling the necessary

conditions, the marriage contract shall be completed between them. No type of medical examination is mandatory for the couple. Because marriage is a permissible (mubah) right for them, this permissible matter cannot be restricted.

But if it is argued that, in view of the expected public welfare through such an examination, this permissible act will be made compulsory for them and restrictions will be imposed on their steps regarding marriage until this permissible matter is completed; would such steps then be legally valid?

Yes, it would be valid. This falls under the category of restricting a 'mubah' or permissible matter to an acceptable degree, as public welfare is inherent in it and it causes no harm to anyone.

Similarly, making marriage registration mandatory, determining the method of marriage, establishing rules for documenting conditions, and similar matters fall under the imposition of restrictions on permissible (mubah) subjects. However, in these cases, public welfare is inherent in the protection of rights.

(3) Prohibiting the Niqab:

In our time, it is heard from some people that banning the niqab falls under the category of restricting a permissible (mubah) matter, arguing for its legality on the grounds that it is simply another form of limiting 'mubah'. The truth is, this is a manifest error that has no relation to this principle. There is no acceptable jurisprudential (Fiqhi) reasoning behind this statement. This will become clear through the discussion of two points:

The first point: Restricting permissible (mubah) matters pertains to those subjects where both sides are equal (meaning that doing it or not doing it are both equally permissible). For example, preventing people from entering a specific piece of land; this is a permissible (mubah) matter, as entering it is as permissible as not entering it. Therefore, this can be a field for restricting permissible matters. However, matters that are prescribed or commanded (mashru') by Sharia are not subject to such restrictions. Rather, this would be an interference in the provisions of Sharia.

Some people might mistakenly believe that this...

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The assertion that covering the face is obligatory (Wajib) is incorrect; rather, the niqab is unanimously sanctioned by Sharia, even among those who consider leaving the face uncovered permissible. Therefore, advocating for its prohibition is equivalent to banning congregational prayers in mosques, prohibiting voluntary fasting, or the recitation of the Quran, and other similar matters.

Second Issue: Restricting permissible (Mubah) matters is tied to public interest concerns. This is a measure taken for the general welfare of Muslims. Creating constraints within their religious regulations can in no way be considered part of their public welfare, even if there is a perceived rationale behind it. This is because all such reasons are based on imagined harms that could be avoided without imposing any narrowness on the religious affairs of Muslims. For this very reason, even a liberal thinker, while remaining steadfast to the principle of freedom, rejects such restrictions.

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Second Principle

The ruler's decision resolves differences of opinion

One of the most influential factors in Sharia politics (Siyasa Shari'yah) considered from a jurisprudential (Fiqh) perspective is the matter of the ruler's decision regarding controversial (Ikhtilafi) issues. His decision resolves the disagreement surrounding that matter. This is a well-known principle in the books of the jurists of the four Madhabs (1).

This is generally cited in the context of a judge's (Qadi) decision on controversial matters. In such instances, following his decision is mandatory, even if differences of opinion persist. This ensures that the presence of disagreement is not exploited as an excuse to undermine the authority of a judicial ruling or weaken the resulting decrees and directives. Thus, the ruler's decision is established as that which removes dispute. This means it is binding on both parties involved; no one has the right to oppose a judicial decision based on their differing jurisprudential opinions.

If this were not the case, then: (the foundations of rulers would not be secure, and disputes would remain as they were even after a trial. As a result, quarrels and conflicts would gain permanence, corruption would spread, and enmity would continue. This is fundamentally contrary to the wisdom for which rulers are appointed) (2).

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(1) For references from the Fiqh texts of the four Madhabs, see: Hashiyah Ibn Abidin 3/412, Al-Bahr al-Ra'iq 4/192, Sharh Mukhtasar Khalil by Al-Kharashi 7/157, Hashiyat al-Dasuqi 2/258, Tuhfat al-Muhtaj 6/246, Nihayat al-Muhtaj 6/222, Sharh...

Muntaha al-Iradat 3/503, Nayl al-Ma'arib 2/457. Al-Qarafi has described the disagreement of some Shafi'i scholars against the majority of jurists (Jumhur) regarding a specific part of this principle.

The matter is: if a judge's ruling is presented to someone who does not believe it to be correct, he shall neither enforce it nor annul it, but rather leave it as it is. See: Al-Furuq 2/103-104 & 106; for certain statements of the Shafi'is, see: Rawdat al-Talibin 11/152, Al-Ashbah wa al-Naza'ir 1/416.
(2) Al-Furuq 2/104; see also: Al-Faqih wa al-Mutafaqqih by al-Khatib al-Baghdadi 2/124, Al-Qawa'id al-Kubra 2/471.

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Judicial scrutiny is not limited only to disputed legal provisions, but also encompasses disputed modes of proof. (1)

Al-Jassas states:

(And in the description we have provided regarding the execution and annulment of contracts, one proof of the effectiveness of a judge's ruling in those cases is the consensus of all that if jurists have disagreed on an issue and the judge issues a ruling based on one of those perspectives, then his ruling shall be effective. The possibility of rejecting it through juristic reasoning (Ijtihad) is removed for what he has performed. It becomes lawful for the party in whose favor the ruling was given to accept it, and it is not lawful for the party against whom the ruling was given to resist it, even if the beliefs of both are contrary to it. For example: the right of pre-emption (Shuf'a) based on proximity, marriage without a guardian, and similar disagreements among jurists.) (2)

This rule is not restricted only to the viewpoints of the litigating parties; rather, it resolves disagreements at various levels:

- It binds the litigating parties to comply.
- It binds subsequent judges to comply; as a result, they shall not annul the ruling of the previous judge.
- It also binds common people to comply with the ruling issued by the judge. Therefore, the ruling

issued by the judge is authoritative, not the private belief of individuals. If a judge rules on the validity of a disputed marriage, then that ruling will be effective for the couple as well as for the common people. Consequently, no one can marry that woman by claiming she is not legally married based on their own juristic (Fiqhi) opinion.

However, jurists have disagreed on two well-known issues included under this rule:

First Issue: If a judge issues a ruling based on false testimony, does that ruling make the forbidden (haram) lawful (halal)? This pertains to judicial proceedings being completed on a matter of which, if the judge were aware...

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(1) See: Al-Furuq 4/48.

(2) Ahkam al-Qur'an 1/307 - 308.

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...the decision will be made through it. Therefore, they have agreed that regarding wealth, it will be valid externally but not internally (1). However, they disagreed concerning contracts and the cancellation or termination of contracts.

The majority of jurists hold the view that it will only be effective externally; it will not make anything prohibited (haram) permissible (halal), nor will it make anything permissible prohibited. According to the opinion of the Hanafi school and a narration from Imam Ahmad, it will be

effective both externally and internally (2).

Second Issue: If the judge makes a ruling that is contrary to the belief of the person in whose favor the ruling was made, will it be internally valid for them?

Regarding this, they are divided into three opinions:

First Opinion: It will be valid for them both externally and internally. This is the opinion of the 'Jumhur' or the majority of scholars (3).

Second Opinion: From the perspective of 'Siyasah Shar'iyyah' (Sharia-based administrative policy), it will be valid only externally, but in the internal reality of the matter, it will not be valid for them (4).

Third Opinion: It will be valid for the person who believes in it or for a common person. However, for one who does not believe in it or the scholar who holds a contrary opinion, it will not be valid for them (5).

Ibn Taymiyyah says:

(1) See: Al-Jami' li-Ahkam al-Qur'an 2/338, Majmu' al-Fatawa 35/377; and also see: Al-Maslahah 'ind al-Usuliyyin by Faisal al-Du'aybi, page 509.
(2) See: Al-Mabsut 16/180, Al-Bahr al-Ra'iq 3/116, Rawdat al-Talibin 11/152, Al-Dardir's Al-Sharh al-Kabir 4/156, Al-Khirshi's Sharh Mukhtasar Khalil 7/166, Al-Mughni 10/53, Al-Insaf 11/312.
(3) This is the more sound opinion of the Maliki and Shafi'i schools and the opinion of the Hanbali school. See: Sharh Muntaha al-Iradat 3/535, Al-Khirshi's Sharh Mukhtasar Khalil 7/166, Hashiyat al-Disuqi 4/156-157, Rawdat al-Talibin 11/153, Nihayat al-Muhtaj 5/338; also see: Ihkam al-Ahkam 2/271.
(4) This is one opinion of the Shafi'i school and a narration from the Hanbali school; Ibn al-Salah also expressed this. See: Rawdat al-Talibin 11/153, Nihayat al-Muhtaj 5/338, Al-Insaf 11/312, Jami' al-Masa'il 5/385.
(5) One opinion of the Shafi'i school is that it will be permissible (halal) for the one who believes in

it, but not for the one who does not believe in it. Izz al-Din ibn 'Abd al-Salam held the opinion that it will be permissible for common people but not for a scholar. See: Al-Qawa'id al-Kubra 2/82, Rawdat al-Talibin 11/153.

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If a ruler makes a ruling on a matter that the person receiving the judgment (the one in whose favor the ruling was made) considers forbidden (haram), then according to narrations from Imam Ahmad (may Allah have mercy on him), there is a difference of opinion as to whether it becomes lawful for them through that ruling. There are two narrations in this regard. The correct analysis is: it is not appropriate for a person to seek anything from the Imam that they believe to be forbidden. Whoever does so essentially does what they consider forbidden, and this is not permissible. However, if the applicant is someone else, or if the Imam himself initiates a ruling or distribution, then the view that it is lawful is stronger. (1)

Will differences of opinion be resolved through the Sultan's directives?

Although jurists (fuqaha) mention this principle in the chapter on the 'Judiciary' (Al-Qada), it does not mean that the Sultan's directives are not covered by it. Rather, the Sultan's rulings also resolve differences in the same manner. Following the Sultan's independent legal reasoning (ijtihadi opinions) to preserve public interest (maslahah) is mandatory. This is because a judge (qadi) is one of the Sultan's representatives; hence, if this is valid for a judge, it is even more applicable to one of higher status (i.e., the Sultan). Furthermore, the Sultan's directives belong to the same

category as judicial rulings; in fact, they are even more powerful. Therefore, obedience to the Sultan in his directives is obligatory (wajib), even on controversial matters, provided that public interest is ensured.

Moreover, jurists have mentioned provisions for resolving differences even for those of lower rank than the Sultan, such as a Zakat collector (sa'yi). If he collects Zakat based on his independent reasoning (ijtihad), it cannot be voided; (2) because the Zakat collector is a representative of the Imam, and his action is like the Imam's ruling, which resolves differences. (3)

However, there is a difference of opinion among scholars regarding certain actions of the Imam—such as if he concludes a peace treaty or determines the amount of Jizyah. Is this like his judicial ruling, which resolves disagreement and cannot be legally overturned by a successor? Or is it merely an administrative act that does not prevent a successor from changing it? (4)

(1) Al-Fatawa al-Kubra 5/533; see also: Jami' al-Masail 5/388.
(2) See: Al-Furuq 2/103 and 4/52.
(3) Kashshaf al-Qina' 2/232.
(4) See: Al-Istikhraj 89-90; Al-Qawa'id wal-Fawa'id al-Usuliyyah by Ibn al-Lahham 376; At-Tahbir Sharh at-Tahrir 4/1594-1595. Hanbali jurists have clarified that the Imam's actions are like his rulings. See: Al-Mughni 3/27; Sharh Muntaha al-Iradat 2/10. The view of Hanafi and Maliki jurists is that the Imam's actions...

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The broad scope of this principle and the fact that it is not limited only to judicial disputes is supported by the fact that some

Jurists have mentioned matters that fall within the scope of a judge's verdict and serve to resolve disputes. Examples include: granting permission to install a drainage pipe (mizab), or authorizing the construction of a structure on a public road, whereby the builder will not be held liable for any damages. Similarly, a judge's order to dispose of prohibited wine, or the sale or endowment (waqf) of conquered lands (Ardul Anwah), and other such matters. These decisions exceed the limits of ordinary judicial review and belong to the category of public interest matters, which essentially fall under the special jurisdiction of the Imam or the Head of State.

In strengthening this meaning, some statements from scholars are as follows:

Ibn Taymiyyah states:

"Matters pertaining to the Imam or the Head of State also pertain to his representatives. Therefore, in responsibilities entrusted to rulers, the directive of a judge—who acts as the Imam's representative in that regard—is considered equivalent to the Imam's directive. Examples include: marrying off women who have no legal guardian, supervising endowed (waqf) properties and managing them according to the conditions of the endowers, maintaining mosques, and managing their endowments. Since the Imam has the right to take action in these matters, his representative also has the authority to intervene where the Imam would. Furthermore, if the matter is subject to legal reasoning (ijtihad) where disagreements exist, no one has the right to protest the actions of anyone—be it the Imam or his representative, whether a judge or someone else. Moreover, the actions taken by the Imam and his representatives in such cases cannot be annulled."

He further says:

"The language of the Quran and Sunnah and the consensus (ijma) of the predecessors (Salaf) of the Ummah prove that obedience is due to those in authority (Ulil Amr or responsible persons)—such as the leader of prayer, the judge, the commander in matters of war and spoils, and the zakat collector—specifically in matters of their legal reasoning (ijtihad); and this does not

mean..."

= The statement is not a judicial verdict. See: Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam, 186; Tabsiratul Hukkam, 1/106-108; Al-Ashbah wan-Nazair (Ibn Nujaym), 91. Saymiri Hanafı has mentioned that what an Imam performs, no one after him can annul. See: Masailul Khilaf fi Usulil Fiqh, 296-297. According to Ibn Rushd, land allocation by an Imam is a judicial ruling. See: Al-Bayan wat-Tahsil, 7/365. According to the Shafi'is, a protected area (Hima) can be annulled for public interest or necessity, though it is also said it cannot be annulled. See: Rawdatut Talibin, 5/293; Nihayatul Muhtaj, 5/342.

(1) Sharh Muntahal Iradat, 3/503.

(2) Majmu'ul Fatawa, 20/407.

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In matters related to ijtihad, the duty of his followers is to obey him; rather, in these cases, it is mandatory to obey him and adopt his view while setting aside one's own opinion. For the welfare of the community and unity is greater than the harm of division and disagreement over minor legal issues. For this reason, it is not permissible for one ruler to annul the verdict of another ruler (1).

Al-Juwayni states: (If following the Imam in investigative issues was not mandatory, it would not be possible to resolve disputes in ijtihadi matters. Every litigant would remain firm in their own school of thought (madhhab) and claim, and the parties would be embroiled in endless conflict, caught in the trap of juristic disagreements; whereas the majority of legal proceedings involving people occur in matters related to ijtihad) (2).

Methods of Resolving Disagreements by the Imam:

The circumstances of the Imam's orders do not take a single form; rather, they can be categorized into several methods:

First Method: If it is a judicial verdict, such as when it is issued to settle a dispute between two litigants or to impose a specific penalty. In this case, like any other judicial verdict, it falls under the resolution of disagreements.

Second Method: Adopting one of two opinions in matters concerning regulations vested in rulers. An example is adopting a method for land endowment (waqf), as Umar (RA) did regarding the Sawad lands. In such a situation, his decision shall be acceptable and effective, and it is not permissible to oppose it.

Third Method: Choosing one opinion from among acceptable divergent views; this too will be valid, and a discussion regarding its conditions will follow later.

Fourth Method: Prohibiting an acceptable jurisprudential (Fiqhi) opinion if its implementation leads to harm or social discord (fitna). In such circumstances, obedience to this in practice is mandatory (wajib). This occurs if, as a result of Fiqhi disagreement...

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(1) Jami' al-Masa'il 5/273 - 274; also see: Jami' al-Masa'il 5/385, 5/388, 5/389, and 5/279.
(2) Al-Ghiyathi 350 - 351.

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...causes specific strife or harm among Muslims, then it is permissible to prohibit issuing fatwas or acting upon an acceptable opinion to avert this greater evil. For example, the disagreement regarding the audible recitation of "Bismillah" in congregational prayers; if this results in strife and

disunity among people, as described in disputes occurring in Fiqhi history. In such cases, it is Sharia-compliant to prohibit it or enforce one specific view to suppress such strife, even though it originally concerns acceptable matters that are not typically subject to state intervention.

Furthermore, when it is Sharia-compliant to abandon recommended (mustahabb) acts for the sake of fostering cordiality among people and suppressing strife (1), then abandoning an acceptable opinion to protect similar interests is even more justified.

Fifth Method: Imposing the obligation of a judicial ruling based on a reliable Fiqhi school (madhhab). The majority (jumhur) of jurists have opined that this is prohibited and that enforcing a specific school is not permissible (2). However, this view of the jurists primarily applies to a judge who is a mujtahid (independent jurist). But a judge who is a muqallid (follower of a school) shall not be prohibited from adhering to a specific school (3).

Contemporary disagreements have arisen in the drafting of modern judicial laws based on this particular issue (4).

What is the meaning of "resolving disagreement" in this rule?

There are two meanings for resolving differences of opinion here:

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(1) See: Sharh Sahih al-Bukhari, Ibn Battal 1/205; Ahkam al-Quran, Ibn al-Arabi 4/369-370; Sharh Musnad al-Shafi'i, Rafi'i 2/348; Al-Fatawa al-Kubra 2/166 and 2/351.
(2) This is the school of thought (madhab) of the Shafi'is and Hanbalis and an opinion of the

Hanafis and Malikis. See: Al-Hawi al-Kabir 16/25; Rawdat al-Talibin 11/120; Al-Mughni 10/93; Kashshaf al-Qina' 6/292; At-Tawdih fi Sharh Mukhtasar Ibn al-Hajib 7/391; Hashiyat ad-Dasuqi 4/130; Fath al-Qadir, Ibn al-Humam 7/257.

(3) Regarding this meaning, see the statements of the noble scholars in: As-Siyaghat al-Fiqhiyyah, Haytham al-Rumi 422-423.

(4) Regarding the course of this disagreement and the proofs of both sides, see: As-Siyaghat al-Fiqhiyyah, Al-Rumi 435-455; Taqnin al-Ahkam al-Qada'iyyah, Al-Fayez 57-98; An-Nawazil at-Tashri'iyyah, Al-Mayman 89-133.

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First Meaning: Judicial meaning; that is, when a dispute arises over a specific matter, the judge issues a verdict based on a juristic (fiqhi) opinion. Consequently, following his ruling becomes mandatory, and nothing other than what the judge decrees is considered effective or correct.

Second Meaning: A broader meaning than the former; and that is making it mandatory to follow a specific juristic opinion or to prohibit it for the sake of an acceptable public interest (maslahah).

In both senses, the objective is—to follow an acceptable juristic opinion due to the presence of a general Sharia-based public interest, which makes this matter essential. And the difference of opinion remains in its place; it is not eliminated. For this reason, the application of this principle is only related to that practical field where it is required. Therefore, when a judge decides between two litigating parties, he resolves the difference regarding that specific matter in dispute between them; this does not mean that the overall difference of opinion has been removed.

Limits of the Obligatory Resolution of Differences:

This principle operates within a specific framework subject to the judge's ruling. And the rule for

his judgment is: "It only carries weight when he provides it on an interpretive (ijtihadi) matter where understandings are closely aligned due to some worldly public interest"(1).

We can arrange this in the following sentence:
Acceptable difference of opinion, related to matters of public interest and where a Sharia-based public interest exists behind making it mandatory on the basis of acceptable interpretation (ijtihad) in practical fields.

1- Acceptable difference of opinion:

And that is the potential difference of opinion which is not contrary to any 'nass' (textual evidence) that has no competing evidence, nor is it contrary to ijma (unanimous consensus).

Based on this, it is not permissible to oppose the definitive rulings of Sharia. Similarly, acting upon an unacceptable difference of opinion...

...is not permissible; let alone it being a resolver of disputes.

(1) Al-Furuq 4/49.

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And this is because when a ruler's decision contradicts a definitive evidence (Nass) or Consensus (Ijma), it becomes void. Sufyan al-Thawri said: "When a judge gives a ruling that contradicts the Book of Allah, the Sunnah of the Messenger of Allah, or a matter of consensus, the subsequent judge shall nullify it. However, if the matter was based on personal opinion, he should not nullify it,

and the matter will be accepted as it is." (1)

Imam ash-Shafi'i said: "If a judge from among the judges exercises Ijtihad and later sees that his Ijtihad was wrong, or if that decision is presented to another judge; in such a case, if it contradicts the Book of Allah, Sunnah, Ijma, or anything of that level, he shall nullify it. Besides this, nothing else is permissible for him. And if the matter is such that both his adopted view and the differing view have scope for acceptance, then he shall not nullify it." (2)

This is a matter of consensus among the scholars. Ibn Abd al-Barr said: "The noble scholars have agreed upon this, that clear injustice and clear errors that contradict Ijma or a well-established, famous Sunnah for which there is no counter-evidence—regardless of who issued the ruling—are rejectable." (3)

Imam al-Qarafı clarified the scope of application of this principle by saying: "My statement: 'In matters of Ijtihad,' is to avoid areas of Ijma. Because the ruling there is established through consensus; as a result, it is specific, and because it is proven by Ijma, it is impossible to innovate a new ruling there. And my statement: 'Where the evidence is close,' is to avoid isolated (shadh) disagreements based on weak evidence. Because this is not a genuine disagreement; rather, if a fatwa is given based on such weak evidence, then that decision shall be nullified." (4)

And the essential and self-evident (Ma’lum min ad-Din bi al-Darurah) rulings of religion, definitive decisions, and areas of consensus are permanent and unchangeable matters. Therefore, in this sphere, the duty and power of the Ulil Amr (authorities) is that they shall establish them...

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(1) See: Musannaf Abd al-Razzaq 8/1008, number: (15298).
(2) Ahkam al-Qur'an: 408.
(3) At-Tamhid 9/91. For instance, a group of scholars have narrated a consensus that matters contradicting Nass or Ijma shall be nullified. See: Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam: 82; Majmu' al-Fatawa 39/31 and 27/302; Al-Faqih wa al-Mutafaqqih 2/124; I'lam al-Muwaqqi'in 3/224;

Al-Ihkam fi Usul al-Ahkam, Al-Amidi 4/203. For a detailed description of the limits of this nullification and the differences among scholars, see: Bahth Naqd al-Ijtihad, Walid al-Wadan, Alukah Network.

(4) Al-Furuq 4/51 and see: Al-Qawa'id al-Kubra 2/273.

...preserving the religion and implementing its provisions, clarifying these provisions, safeguarding them, and compelling people to adhere to the requirements of Sharia regulations by enforcing them. (1)

2. Matters related to public interest or general affairs of the state:

This refers to differences of opinion involving general matters where Siyasah Shar’iyyah (Sharia-based policy/governance) is applicable. If the matter is personal or pertains to a specific individual, it does not fall within the scope of Siyasah Shar’iyyah.

Among these are acts of worship (Ibadat); because worship is fundamentally not an area where the ruler resolves differences of opinion. (2)

An example of this is: granting permission for Friday (Jumu'ah) prayers. There is a difference of opinion among scholars on this issue: Can the ruler impose a condition that Friday prayers cannot be established without his permission? Al-Qarafi mentioned that the ruler does not have this right. However, if chaos and conflict arise, he can prevent opposition for that reason. But this is not

included in the "resolution of disagreement" (Raf'ul Khilaf) by the ruler (3); whereas Ibn al-Shat opposed him and included this matter under this legal principle (Usul). (4)

And this is because: (It is a field of Ijtihad. Therefore, when the Sultan or ruler adopts a course of action in this regard, it cannot be opposed. And following him becomes obligatory, just as when a judge renders a verdict on a matter where there is disagreement among scholars, his verdict becomes effective and cannot be rejected). (5)

Al-Juwayni mentioned that when acts of worship become part of public symbols (Sha'air), they become associated with the decision of the Imam or the head of state.

And this is of two types:

Firstly: Matters involving a large number of people and public gatherings, such as Friday and the two Eids. In this case, the Imam's permission is not a condition, but the Imam or head of state cannot remain indifferent to the matter. This is because large public gatherings can often be places where undesirable or prohibited events occur.

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(1) See: Sultatu Waliyyil Amri fil Ahkamil Ijtihadiyyah 1/313-322.

(2) See: Al-Furuq 4/48; and for differences on this matter, see: I'lyamu Waliyyil Amri wa Atharuhu fil Masayilil Khilafiyyah, Abdullah Al-Makhroot 62-63.

(3) See: Al-Furuq 4/49.

(4) See: Al-Furuq 4/49; and see: Sharh al-Zurkani ala Mukhtasar Khalil 2/110.

(5) Mawahibul Jalil 2/174.

Secondly: In matters that are not performed collectively, such as congregations other than the Adhan and Jumu'ah; if these religious symbols (*Sha'air*) are being abandoned, the Imam (ruler) shall compel them to observe them.

And regarding those physical acts of worship that are not included among the religious symbols, the Imam shall not interfere in them; unless a specific case is brought before him, such as a person abandoning prayer (*Salah*) without any excuse, in which case he shall punish him. (1)

When a certain Shafi'i scholar mentioned that the ruler has the right to command the performance of Jumu'ah prayer before or after the sun's meridian (*Zawal*) according to his own school of thought (*Madhhab*), Ash-Shirwani criticized it, saying:

(Certainly the jurists have clearly stated that it is not permissible for the Imam to call the people toward his own *Madhhab*, and it is not appropriate to interfere in the matter of people's prayer timings. Obedience to the Imam's command is only required from the heart when he commands a recommended (*Mustahabb*) or permissible (*Mubah*) act in which public interest lies; therefore, how can obedience from the heart be mandatory regarding a command to perform Jumu'ah before the time of Zuhr or to delay it until after the time of Zuhr?) (2)

The essence is that the ruler's command enters the sphere of worship only as a secondary or auxiliary factor. (3)

Ibn Farhun states:

(The actions of rulers include issuing *Fatwas* (legal rulings) on worship and other matters, such as—prohibitions of marital relations, the legality of benefiting from the purity of water, and determining the impurity of various objects. However, these are not final judicial decrees; rather,

for those who do not believe in them, there is scope for a *Fatwa* to be given contrary to the *Fatwa* of the ruler or the Grand Imam; rather, those who do not believe in it have the opportunity not to act as the ruler does. Similarly, if the ruler commands a good deed or prohibits an evil deed that he himself considers good or bad, those who do not believe in it have the opportunity not to follow the ruler's similar action. However, if the Imam calls upon someone to protest against an injustice and there is a fear of creating disunity or division by opposing it, then in that case, obedience will be mandatory. And the principle regarding the ruler is that he should not assist in any such work which, in our opinion, is contrary to his position, unless there is a fear of such *Fitnah* (strife) where the Shariah has prohibited showing leniency.) (4)

(1) See: Al-Ghiyathi 338 - 340.

(2) Hashiyatush Shirwani 2/419 - 420.

(3) Hashiyatul Adawi 'ala Sharhil Kharshi 2/75.

(4) Tabsiratul Hukkam 1/135 - 136, and see: Al-Ihkam fi Tamyizil Fatawa 'anil Ahkam 184, Al-Mawardi's Al-Ahkamus Sultaniyyah 356 - 357, Al-Farra's Al-Ahkamus Sultaniyyah 288.

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Jurists differ on many intricate details regarding the conditions, pillars, obligations, and Sunnahs of worship. Therefore, it is not permissible for a ruler to impose a specific jurisprudential opinion on the people when there is room for them to follow another opinion. In principle, this is the case; however, according to some jurists, there are certain situations that allow for the entry of

Sharia-based politics (Siyasah Shar'iyyah) into the sphere of worship. We can mention three conditions here:

1- When a general public interest (Maslahah Ammah) is involved with the timing, location, or the method of gathering for worship, then Sharia-based politics will be relevant to this matter.

2- When a ruler commands the performance of a recommended (Mustahabb/Mandub) act; will this have any effect on its ruling? Detailed discussions and differences among jurists regarding this will be presented in the chapter on practical discussion.

3- When an authority figure (or Muhtasib) issues a command regarding a matter subject to Ijtihad or research—according to the opinion that he holds this right (1).

On the other hand, Sharia rulings on which there is consensus are not included in this context. This is because imposing obligations in those cases is related to "enjoining what is good and forbidding what is evil."

3- And the existence of Sharia-based public interest behind enforcing compliance:
Because any action of the ruler is dependent on public interest. Therefore, it is essential for such enforcement to have an acceptable public interest that necessitates such obligation.

4- In practical fields:
Enforcement is connected to matters of public interest, and it is specific to the practical aspect.

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(1) See: Al-Ahkam al-Sultaniyya, Al-Mawardi 351; Al-Ahkam al-Sultaniyya, Abu Ya'la 287-288; Al-Qawa'id al-Kubra 2/273. An example of this is—when he is ordered to do something that the Imam considers good (Ma'ruf) or is forbidden from something that he considers evil (Munkar) and is called to abandon it, and there is fear of discord, then obedience becomes obligatory. See: Al-Ahkam 184; Tabsirat al-Hukkam 1/106. Sometimes this matter may not be included, because then obedience is related to preventing fitna (strife) and significant harm, rather than the original

ruling.

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The relevance of an academic or epistemological opinion that an individual chooses through *ijtihad* (independent reasoning) or *taqlid* (imitation) does not end, nor is it prohibited. This is because there is no benefit in prohibiting it.

For this reason, since the era of the noble Companions (may Allah be pleased with them), the scholars of Islam have disagreed on academic issues, debated, and responded to one another. As a result, various schools of jurisprudence (*Fiqh*) emerged, and no one forced all people to follow their own opinion.

In this context, the famous incident of Abu Ja'far al-Mansur's request to Imam Malik to compel people to follow the 'Muwatta' is noteworthy. Imam Malik said: **"O Commander of the Faithful! Do not do this. For various reports have reached the people; they have heard and narrated hadiths. Every region has accepted what reached them, acted upon it, and practiced the religion according to the differences among the Companions of the Messenger of Allah (PBUH) and others. Therefore, it is extremely difficult to turn them away from what they have come to believe. So, leave the people to their own conditions and let the inhabitants of each region remain upon what they have chosen for themselves."** (1)

After mentioning the responsibility of the Imam (head of state) in removing innovation from the religion, Al-Juwayni says: **"The righteous predecessors (Salaf al-Salihin) lived through the tradition of scholarly differences regarding the branches of Sharia and issues derived based on**

predominant probability, and the honorable Companions of the Messenger of Allah (PBUH) left this world following this tradition. Their differences open the path for research into the evidences of Sharia, which is a grace and blessing from Almighty Allah. And the Messenger of Allah (PBUH) said: 'The disagreement of my Ummah is a mercy.' Therefore, the Imam should not interfere in the disagreements of the jurists regarding the intricacies of rulings. Rather, every Imam and their followers should be allowed to remain upon their respective schools of thought, and they should not be hindered from their path and goal." (2)

5. Based on the reliable Sharia ijtihad of any mujtahid or their followers:

This is a condition for every public welfare activity and for issuing fatwas under *Siyasah Shar'iyyah* (Islamic governance).

(1) See: *Al-Intiqa fi Fadail al-A'immat al-Thalatha al-Fuqaha*, Ibn Abdil Barr 41; Al-Mahdi also presented the same proposal to him, see: *Al-Intiqa* 40.
(2) *Al-Ghiyathi* 332-333, and see: *Al-Jawahir al-Mudiyyah fi Bayan al-Adab al-Sultaniyyah*, Al-Munawi 67.

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...and the judicial system; therefore, there is almost no need to mention it, as it is a condition for every *ijtihad* and is not only related to this specific subject.

However, it is important to mention the matter here to guard against the misconceptions that may arise in people's minds due to a lack of complete understanding of the nature of *ijtihad* as directed by Sharia.

Therefore, in the case of **'resolving differences,'** it is inconceivable that a ruler would compel the abandonment of an obligatory matter,

Even if it concerns a matter subject to difference of opinion. For instance, some ignorant individuals in our era provide arguments that banning the niqab is valid on the grounds that it is an obligation from the ruler intended to resolve differences. This is their ignorance; because it is a Sharia obligation (wajib). Even those who do not consider it mandatory regard it as a Sharia provision. Therefore, it is inconceivable that the principle of "resolving differences" would be applied in such cases where, under the pretext of resolving differences, banning prayer in congregation would be considered valid!

Moreover, this is not applicable even in imposing an obligation to abandon a Sharia-recommended (mustahab) act. This is because recommended acts are encouraged for practice, not for prevention. However, if the prohibition is a secondary matter and not the primary objective, but rather intended to prevent strife (fitna) or general harm, it is a different matter. In such cases, one may be directed to perform a specific recommended act, which might consequently lead to the prevention of another recommended act performed by others. As previously illustrated in the case of reciting "Bismillah" aloud during congregational prayer. Such matters are permissible because the instruction is not fundamentally to ban a recommended act, but rather to perform a specific one. Thus, it is an obligation to perform a recommended act, not a direct prohibition of any recommended act.

Similarly, no forbidden (haram) matter can be imposed on people under the pretext of resolving differences. If there is a difference of opinion on a matter, it should be categorized among those issues where choice or preference is left to the people, as these are issues where differences of opinion exist. Performing forbidden acts cannot be made mandatory for them under the excuse of resolving differences! However, if an obligation is imposed on a permissible (mubah) matter for

the sake of Sharia public interest, which consequently must be followed by everyone—even those who consider it forbidden—then it is not initially forcing them to do something forbidden. Rather, what has been made mandatory is an acceptable opinion, so following it does not constitute performing a forbidden act.

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Furthermore, at the outset, it cannot be assumed at all that there could be any acceptable beneficial reasoning for compelling the abandonment of recommended acts or the performance of forbidden ones. Therefore, this falls outside this principle, as it creates an obligation towards corruption or harm and has no connection with the pursuit of public interest (istislah).

Is it a condition for the ruler to be a Mujtahid for resolving disputes?

The matter is that jurists (fuqaha) stipulate being a mujtahid as a condition for judges (qadis) and leaders (imams) regarding Sharia rulings (1). This issue creates a complexity in suspending the application of this principle, yet its necessity is undeniable and crucial for achieving public interest. To resolve this complexity, some scholars have stipulated that if he is not a mujtahid, he should at least be a follower (muqallid) of the mujtahids (2).

The purpose of this condition is likely to protect this principle from misuse, which is commendable; however, it remains problematic because misuse can still occur despite the existence of this condition (3).

The more correct view is that this principle is not a special privilege of governance, such that one could say no one but a person with specific qualities is suited for it; rather, it is an essential administrative measure aimed at achieving the welfare of the people. If its application is cancelled, many public interests will be compromised. Therefore, priority should be given to those conditions that ensure the correct application of this principle and through which acceptable

public interest is protected, rather than focusing on a specific individual. Thus, when a Sharia-compliant and reliable public interest is achieved, the objective is fulfilled. Therefore, the means used for the preservation of the objective...

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...what is being done, the original purpose cannot be nullified due to any flaws in it.

(1) The majority of jurists (Jamhur Fuqaha) have made being a mujtahid a condition for a judge. The Hanafis and some Maliki scholars hold a different view on this matter. See: Fath al-Qadir by Ibn al-Humam 6/357, Al-Bahr al-Ra'iq 6/433, Tabsirat al-Hukkam 1/21, Mawahibul Jalil 8/67, Rawdatut Talibin 8/82, Al-Insaf 11/177, Al-Muhalla 9/363. Similarly, most have stipulated this condition for the Great Imam as well, and some have even reported a consensus (ijma) in this regard. See: Ghiyath al-Umam 84, Tamhid al-Awa'il 473. Conversely, some have argued that this is not a condition, such as Ibn Hazm in Al-Fasl 5/11, Shawkani, and Siddiq Hasan Khan in Iklil al-Karamah 113.
(2) See: Muhammad Salam Madkur, Nadhariyyat al-Ibahah 'ind al-Fuqaha wa al-Usuliyyin, page 341.
(3) See: Al-Madkhal al-Fiqhi al-Amm 1/222-223.

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And this is an important principle even in those exceptional circumstances where no Sharia-based Imam (ruler) is present, such as during times of disorder and fitna, or in the case of Muslim minorities living in non-Muslim countries; where people can agree on a representative authority for the purpose of resolving disputes regarding matters of public interest, so that the authority to

resolve disputes remains with them.

Errors in the Application of the Principle: 'The ruler's decision resolves the dispute':

Shaykh al-Islam Ibn Taymiyyah (may Allah have mercy on him) was tested by individuals who misused this principle. He faced various hardships and harms from the judges of his time, who mainly treated him in such a manner based on this kind of principle. For this reason, he discussed this issue at length in several of his books (1).

From Ibn Taymiyyah's criticism of them, we can identify five errors in their use of this principle:

1. Opposing Sharia rulings and imposing obligations on matters contrary to the Sharia:

Giving an example of this, the Shaykh said: (For instance, to issue a decree that traveling [for the purpose of worship] to any place other than the three mosques is Sharia-compliant and recommended, and the one performing it will receive reward. And anyone who says that it is not recommended will be harmed, punished, or imprisoned. All such things are void according to the consensus (ijma) of the Muslims. It is not permissible for any person acquainted with the religion of Islam to follow this, nor is it permissible for any ruler to enforce it) (2).

2. Imposing obligations on other research-based (ijtihadi) theoretical matters outside the scope of 'Siyasah Shari'ah' (Sharia-based politics):

Therefore, the ruler shall not impose obligations regarding any specific madhhab or any controversial issue without a specific reason: (such as those issues in which followers of various madhhabs are involved in differences; no one says that it is mandatory for a follower of a specific madhhab to follow another madhhab...)

(1) See: Majmu’ul Fatawa 35/367-368, 27/290-311, 30/79-81 and 3/234-276; At-Tis’iniyyah 1/149-152, 1/175, 186-187; Minhajus Sunnah 5/132; Jami’ul Fusul, first collection 236-243.
(2) Majmu’ul Fatawa 35/378; and see: At-Tis’iniyyah 1/180.

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If priority is given to one’s own opinion over another’s school of thought (madhhab) when acting as a judge, the matter could be reversed; because someone else could also act as a judge and decide that their own view is correct. Therefore, it is impossible for every one of two mutually contradictory statements to be mandatory for all Muslims to follow.(1)

And he (Shaykh al-Islam Ibn Taymiyyah) was asked about a person who has been given responsibility over a matter concerning Muslims, while according to his school of thought, 'Sharikat al-Abdan' (partnership in physical labor) is not valid; in such a state, would it be permissible for him to prevent people from it? He replied: “He has no right to prevent people from this type of work or similar deeds where there is scope for Ijtihad (independent reasoning). And he has no clear evidence from the Quran, Sunnah, or Ijma (consensus) supporting this prohibition, nor is there anything that falls within the meaning of these.”(2)

And for this reason, people should be left to remain upon their respective schools of thought: “People should be allowed to stay as they are, just as they are maintained upon their practical schools of thought. But if there is any manifest innovation (bid’ah) or something contrary to Shariah that common people also know—such as the beliefs of the Kharijites, Rafidites, Qadariyya, and Jahmiyya—then the ruler’s responsibility is to reject it. This is because the knowledge of these matters is universal, just as his assigned duty is to prevent a person from indecency, alcohol, abandoning prayer, and considering such matters permissible.”(3)

And this principle is limited to his specific domain: “Conversely, he has no authority to decide

matters through force and coercion, except in those specific areas where people have approached him for a judgment. For example, if the heirs of a deceased person are involved in a dispute over the distribution of the inherited property; in such a state, when they come to him for judgment, he will distribute it among them. In this case, if he gives a decision according to any one of the opinions of the scholars, he shall bind the disputing parties by that judgment."(4)

3. Presenting evidence through judicial rulings without Shariah evidence and proof:

(In all these general matters, no judge—whoever he may be, even if he were from among the Sahaba (Companions)—has the right to impose his own words upon an opponent. That is, he will not say: "I am forcing him to do nothing but what is consistent with my school of thought or to not give a fatwa." Rather, Allah and His Messenger are the masters of judgment in all these matters...)

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(1) Majmu'ul Fatawa 35/379-380.

(2) Majmu'ul Fatawa 30/79.

(3) Majmu'ul Fatawa 3/239.

(4) Majmu'ul Fatawa 35/360.

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The ruler is also one of the Muslims; if he possesses knowledge, he shall speak according to what he knows. And if his opponent possesses knowledge, he too shall speak accordingly. Then, if the truth becomes evident through this and the ruling of Allah and His Messenger becomes known, it becomes obligatory for everyone to follow the ruling of Allah and His Messenger. However, if the

matter remains unclear, then each person shall be maintained upon their respective views; the proponent of this opinion shall remain upon their opinion, and the proponent of that opinion shall remain upon theirs. It is not permissible for one to hinder another without knowledge, proof, and clear explanation; that is, he shall express the knowledge he possesses. (1)

(And if the ruler knows the rulings of the Book and the Sunnah, he shall judge among the people accordingly. If he does not know them, but it is possible for him to uncover the truth by understanding what each side is saying, then he shall decide according to the truth. If neither is possible for him, he shall leave the Muslims as they are; each shall worship Allah according to their own independent reasoning (Ijtihad). Despite being the ruler, he has no right to compel anyone to accept the opinion of another.) (2)

4. Imposing Punishment in Acceptable Matters of Disagreement and Unacceptable Matters Before Establishing Proof:

(It is not the case that in every matter of disagreement, as soon as one party establishes proof for the correctness of their view, it becomes permissible to punish their opponent. Rather, in most matters of disagreement within the Ummah, it is not permissible for any disputing party to punish the other for not following their opinion.) (3)

Even if the matter is one that is obligatory to believe in, it is still not permissible to impose punishment before establishing proof:

(If the statements they have made are not such truths that must be believed in, then it is not mandatory to compel compliance. And if it is a truth that must be believed in, then the evidence for it must certainly be made clear; for it is not permissible to impose punishment before establishing proof.)

(1) Majmu'ul Fatawa 35/360.
(2) Majmu'ul Fatawa 35/387; see also: Majmu'ul Fatawa 27/299-300, Majmu'ul Fatawa 35/374-375, 382-383, and 387; At-Tis'iniyyah 1/181 and 1/151; Jami'ul Fusul, Volume 1, 240.

(3) At-Tis'iniyyah 1/184; see also: 1/177 and 1/181; Majmu'ul Fatawa 27/307-308 and 27/311.

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According to the consensus of Muslims, if a statement is something that the Messenger has revealed and explained, then the evidence is established through the narration of His Messenger. However, if the matter is not as such, then evidence must be presented and disclosed in its favor, which is mandatory to follow and forbidden to oppose. (1)

5. Interference in these matters by an unqualified person:

Because imposing an obligation on any matter depends on knowing the Shari'ah rulings regarding legal and judicial issues and understanding the areas of consensus and disagreement. Therefore, when a person is not qualified for this task, they will not be able to reach the truth. (2)

(Therefore, if the opinion on which they based their judgment has not been stated by any of the Muslim Imams, and if it is not the school of thought (Madhab) of the Imams they follow, and if no one among the Sahaba (Companions) and Tabi'un (Successors) has said it; and if there is no evidence for it from the Book of Allah and the Sunnah of His Messenger (peace and blessings be upon him), but rather their statement is contrary to the Book, Sunnah, and the consensus (Ijma) of the Imams; then how can it still be permissible to compel the following of this opinion of Muslim scholars and to implement this ruling which is against the Book, Sunnah, and Ijma?) (3).

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(1) At-Tis'iniyyah 1/183, see: 35/382-383, 35/378-379.

(2) Ibn Taymiyyah has extensively criticized them on this matter due to their limitations, their opposition to the views of their own Fiqh Madhabs, their opposition to consensus (Ijma), and their opposition to recognized judicial regulations. See: Majmu’ al-Fatawa 28/59, 27/253-254, 3/256, 3/267-269, At-Tis'iniyyah 1/184-185.

(3) Majmu’ al-Fatawa 35/380-381.

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Third Principle

The Actions of the Ruler are Linked to Public Welfare

One of the fundamental principles of Siyasah Shar’iyyah (Sharia-based politics) is that the actions of the ruler are linked to public welfare (Maslaha). It is a Shari'ah principle for every person in a position of responsibility, whether great or small, that the activities regarding the matters under their authority must be related to public welfare. Since it pertains to the affairs of others, it is necessary for him to be a well-wisher towards them.

Shari'ah Evidences for this Principle:

There are several Shari'ah evidences in support of this principle, the main ones among which are:

First Document: Provisions for the Management of Orphans.

The Word of Allah Almighty: "And do not approach the property of an orphan, except in the way

that is best." [Al-Isra: 34]

The Word of the Glorified and Exalted Allah: "And test the orphans until they reach the age of marriage. Then if you perceive in them sound judgment, hand over their property to them. And do not consume it wastefully and hastily, fearing that they will grow up. And whoever is rich, let him refrain [from taking a fee], and whoever is poor, let him consume reasonably. Then when you hand over their property to them, call witnesses over them. And Allah is sufficient as a Reckoner." [An-Nisa: 6]

The Word of Allah Almighty: "If you associate with them, they are your brothers. And Allah knows the corrupter from the reformer." [Al-Baqarah: 220]

These verses apply to an individual who oversees the wealth of even a single orphan. It is mandatory for them not to spend that wealth in any manner except that which is most beneficial. If such is the case regarding the rights of just one person, then how must it be for one entrusted with an entire nation, where there are many orphans and various other people?

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For this reason, Umar ibn al-Khattab (RA) said: "I have placed myself in the position of a guardian of an orphan regarding the wealth of Allah; if I am in need, I take from it, and when I am affluent, I return it, and if I am self-sufficient, I refrain from it." (1)

From this, scholars have adopted the principle of likening the ruler to the guardian of an orphan. Or as Imam Ash-Shafi'i (RA) stated: "The position of the ruler toward the subjects is like the position of the guardian toward the orphan’s wealth." (2) This is part of the stringency concerning the preservation of public rights.

Therefore, "Whoever is entrusted with any matter shall not manage it in any way other than the best possible manner." (3)

Second Principle: The severity of leadership or governance, caution in seeking it, and what has

been narrated regarding its responsibilities.

Multiple texts have been narrated in Islam describing the gravity or significance of leadership:

It is an accountability before Allah, as narrated by Abdullah ibn Umar (RA); he said: I heard the Messenger of Allah (peace be upon him) say: "Every one of you is a guardian and every one of you will be questioned about those under his care. The Imam (ruler) is a guardian and he will be questioned about his subjects." (4)

Strictness has been emphasized regarding leadership; narrated by Abu Huraira (RA), the Prophet (peace be upon him) said: "You will covet leadership, yet it will be a cause of regret on the Day of Resurrection. How excellent a wet-nurse it is (at the start) and (at the end) how..."

...and an evil foster-mother." (5)

Because the weight of this responsibility is extremely grave, seeking it has been forbidden. It is narrated from Abdur Rahman ibn Samurah (RA) that he said: The Prophet (PBUH) said: "O Abdur Rahman ibn Samurah! Do not seek leadership. For if it is given to you as a result of your request, you will be left alone to bear its burden. But if it is given to you without asking, you will be aided (by Allah) in it." (6)

(1) Narrated by Ibn Abi Shaybah in his 'Al-Musannaf' (32914), Al-Bayhaqi in 'As-Sunan al-Kubra' (7/6), and Ibn Sa'd in 'At-Tabaqat al-Kubra' (3/276).
(2) Al-Umm 5/351.
(3) Adh-Dhakhirah 6/223; see also: Al-Qawa'id al-Kubra 2/168, As-Siyasa ash-Shar'iyyah 20, Al-Mansur fil Qawa'id 1/309.

(4) Narrated by Bukhari (2409) and Muslim (1829).

(5) Narrated by Bukhari (7148).

(6) Narrated by Bukhari (6622) and Muslim (1652).

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The Prophet (PBUH) forbade certain companions from accepting leadership in an absolute manner. For example, Abu Dharr (RA) narrated that the Messenger of Allah (PBUH) said: "O Abu Dharr, I see that you are weak, and I love for you what I love for myself. Do not ever be a leader even over two people, and do not take responsibility for the property of an orphan."

This Sharia emphasis on the magnitude of leadership makes it obligatory to fulfill its rights, safeguard its trust, and strive to be absolved of its liabilities. This cannot be achieved except by adopting the most appropriate course of action for public welfare. Therefore, it is not a personal matter where a ruler acts according to his own whims; rather, it is a trust that must be diligently upheld. Indeed, leadership is among the great trusts whose rights must be fulfilled. Allah the Almighty says: "Indeed, Allah commands you to render trusts to whom they are due." [An-Nisa: 58].

Abu Yusuf said: "Indeed, the shepherd (ruler) will be questioned regarding his subjects. Therefore, it is essential for him to supervise his subjects through all means by which Allah will benefit them and that will bring him closer to Allah. For he who has been tested with the responsibility of subjects has been tested with a momentous matter."

Third Principle: Warning against deceiving the subjects.

It is narrated from Hasan Basri that he said: Ubaydullah bin Ziyad visited Ma'qil bin Yasar (RA) on his deathbed. Ma'qil then said: "I am relating a Hadith to you that I heard from the Messenger of Allah (PBUH). If I knew that...

I still have more of my life remaining, otherwise I would not have told you this. I heard the Messenger of Allah (peace and blessings be upon him) say: "When Allah entrusts a servant with the responsibility of subjects, and he dies while being deceitful towards them, Allah will forbid Paradise for him."

And he who does not act in the most beneficial way for his subjects has essentially deceived them. Therefore, this proves the necessity of acting in accordance with public interest.

(1) This was narrated by Muslim (1826).
(2) Al-Kharaj 132.
(3) This was narrated by Muslim (142).

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A type of deception has been narrated from the Prophet (peace and blessings of Allah be upon him) which is contrary to public welfare behavior. He (peace and blessings of Allah be upon him) said: "Whoever appoints someone from a group while there is someone in that group more pleasing to Allah than him, then he has betrayed Allah, His Messenger, and the believers." (1)

In the same vein, Umar ibn al-Khattab (may Allah be pleased with him) said: "Whoever is entrusted with any affair of the Muslims, and then appoints a person merely because of friendship or kinship between them, then he has betrayed Allah, His Messenger, and the Muslims." (2)

Fourth Principle: Narrations regarding sincerity (nasihah) towards Allah, His Messenger, and the

Muslims.

For example, it is mentioned in the Hadith of Tamim ad-Dari (may Allah be pleased with him) that the Prophet (peace and blessings of Allah be upon him) said: "Religion is sincerity (nasihah)." We asked: "For whom?" He said: "For Allah, for His Book, for His Messenger, for the leaders of the Muslims, and for their common folk." (3)

And he who did not perform the most beneficial act did not fulfill this obligatory sincerity entrusted to him.

What is the meaning of activities being related to public welfare (maslahah)?

Scholars have provided an explanation of this principle. Ibn Nujaym says: "In general matters, if the action of the Imam is based on public welfare, then from the perspective of Sharia, his command will only be effective when it is consistent with that welfare." (4)

And regarding the meaning of 'Ulul Amr' (those in authority), Tabari says:

"Among the correct views on this matter, the most preferable is the one which says: they are the Amirs and rulers; because there are authentic narrations from the Messenger of Allah (peace and blessings of Allah be upon him) containing instructions to obey leaders and rulers, as long as..."

...as long as that obedience is in accordance with obedience to Allah and contains the welfare of Muslims." (5)

(1) Tabarani narrated this in Al-Mu'jam al-Kabir (11216), Baihaqi in Al-Sunan al-Kubra (10/201), and Hakim in Al-Mustadrak (4/104).

(2) See: As-Siyasah ash-Shar'iyyah, page 8.

(3) Muslim (55) narrated this.

(4) Al-Ashbah wan-Naza'ir, 106.

(5) Tafsir al-Tabari, 8/502.

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Al-Izz bin Abdus Salam says:

"Indeed, in every general or specific authority, rulers or officials are appointed to achieve the welfare of the people concerned and to avert harm or loss from them." (1)

Applications of these principles:

Jurists have mentioned many branch issues regarding the implementation of these principles, which include:

- It is not permissible to appoint an immoral person (fasiq) to lead people in prayer (Salat), even though we consider performing prayer behind him as valid; because it is disliked (Makruh). And the ruler is commanded to consider public interest, and there is no benefit in involving people in a disliked act. (2)

- The Sultan or head of state cannot pardon the murderer of a person who has no guardian; rather, he only has the right to take Qisas (retribution) or reach a settlement. (3)

- Regarding the assets of the Bayt al-Mal (public treasury), it is not permissible for a ruler to prioritize a relatively less needy person over a more needy person. (4)

- Similarly, it is not permissible for a judge to donate Waqf assets or the property of a minor, because his intervention in these assets must be limited to matters of their welfare. (5)

What is the ruling on performing the most beneficial (Aslah) act?

Since it has been established that these principles are based on public interest and the performance of the most beneficial (Aslah) act, it is obligatory or necessary to do what is most beneficial; merely achieving general welfare is not enough.

(1) Al-Qawa'id al-Kubra 1/105, and see: 1/171.

(2) See: Al-Ashbah wan-Naza'ir by al-Suyuti, 121.

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(3) See: Al-Ashbah wan-Naza'ir by Ibn Nujaym, 105; Al-Ashbah wan-Naza'ir by Suyuti, 121.

(4) See: Al-Ashbah wan-Naza'ir, 121.

(5) See: Durar al-Hukkam Sharh Majallat al-Ahkam, 1/52.

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Al-Qarafı says:

(The requirement of all these texts [religious legal statements] is to keep everyone away from that harm (mafsadah) which is predominant, and even from that benefit (maslahah) which is non-predominant or equal, or in which there is neither harm nor benefit. Because these four types are not included among the 'best' matters. Guardianship or authority encompasses only bringing about pure benefit or predominant benefit, and preventing pure harm or predominant harm.)(1)

Izz ibn Abdus Salam says:

(Guardians (Wali) and their representatives shall take steps according to our mentioned

methodology in a way that is more beneficial (aslah) for those under their authority. This is for the purpose of removing harm and disaster and aiming to bring benefit and the right path. None of them, while having the capacity, shall limit themselves to mere general benefit (salah) as long as it is possible to achieve a greater benefit (aslah); however, it is a different matter if it becomes a cause of extreme hardship.)(2)

Ibn Taymiyyah says:

(The Muslims have reached a consensus that the duty of the guardian of an orphan, the supervisor of an endowment (waqf), and the representative of a person’s wealth is to act according to what is more beneficial (aslah) for the concerned matter. As Allah the Almighty has said: "And do not approach the property of an orphan, except in a way that is best." [Surah Al-Isra: 34]. He did not say only 'what is good,' rather He said what is 'best' (ahsan).)(3)

(Ibn Abdus Salam says: If this is valid for a commander, then it is even more appropriate for the Amir al-Mu'minin [Leader of the Believers]. It is not permissible to follow personal whims in any of these matters, and it is also not permitted to follow mere general benefit by abandoning what is more beneficial.)(4)

(1) Al-Furuq 4/39; and see: Al-Furuq 2/162, Al-Dhakhira 6/223. See what Al-Qarafı narrated from a group of scholars of the Maliki school: At-Taj wal-Iklil 6/401, Sharh Miyara 'ala Tuhfat al-Hukkam 2/40, Al-Mi'yar al-Mu'rib 7/19-20.
(2) Al-Qawa'id al-Kubra 2/158, and see: 1/114.
(3) Al-Siyasah al-Shar'iyyah 20.
(4) Tabsirat al-Hukkam 2/469.

And this is the opinion of the majority of jurists (1).

The impact of this principle in Siyasah al-Shar'iyyah (Sharia Politics):

This principle is highly influential. Based on it, several impacts are observed in Siyasah al-Shar'iyyah, the primary ones being:

First Impact: Considering public welfare (Maslahah) is included among Sharia obligations.

Therefore, acting in accordance with public welfare is part of those 'ma'ruf' or good deeds that Sharia emphasizes; and abandoning it is contrary to Sharia and constitutes disobedience to Allah and His Messenger.

Through this, a coordination and integration are achieved within the Islamic legal system between 'obedience in good deeds' and 'taking steps according to public welfare'. These two are complementary principles. Directives issued by the Imam or ruler must ensure the welfare of the people, and it is mandatory for the people to implement this welfare through obedience and adherence. If either party fails—meaning, if the ruler does not act according to public welfare, or if he acts according to public welfare but does not receive obedience from the people—then people's rights will be infringed, public welfare will be compromised, and harm or corruption (fasad) will spread.

(1) See: Al-Taj wa al-Iklil 6/401; Mayara's Commentary on Tuhfat al-Hukkam 2/40; Al-Miyar al-Mu'rib 7/19-20; Rawdat al-Talibin 10/46 and 10/334; Asna al-Matalib 4/224; Nihayat al-Muhtaj 8/107; Al-Furu 10/257 and 10/296; Al-Insaaf 4/132 and 4/191; Ghayat al-Muntaha 1/406; Kashf al-Mukhaddarat 2/818. Some Hanbali jurists have held the opinion that in the case of decisions regarding prisoners of war, choosing what is more beneficial (aslah) is recommended (mustahabb). See: Al-Furu 10/257; Al-Insaaf 4/132. Al-Mardawi criticizes this, saying: if the intention is that he will receive a reward for it, then it is acceptable. But if the intention is that it is

permissible to choose what is not ‘more beneficial’ despite the presence of harm—then no one has said such a thing. As some Shafi’i jurists have mentioned as an opinion of the school that it is obligatory to eliminate harm or corruption. See: Al-Subki's Al-Ashbah wa al-Nazair 1/310. Similarly, the Malikis have mentioned regarding the Imam's discretion in the punishment of brigands (Muharib) that choosing the more beneficial option is commendable (mandub); if he chooses the other, it will be sufficient despite being disliked (makruh). See: Al-Dasuqi’s Marginalia with Mukhtasar Khalil on Al-Sharh al-Kabir 4/350.

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Second Impact: Preventing the influence of base desires or personal interests.

Therefore, any regulation related to the ruler's selection or his priorities must be based on public interest. There...

No evil inclinations or personal interests shall be considered.

Al-Juwayni says:
"For the ruler, there is no room to be aggressive like those driven by desires and longings or to act arbitrarily in any judicial matters. Rather, he shall establish the basis for every matter, small or large, and for acceptance or rejection, upon the correct perspective and precision of each chapter." (1)

Ibn Daqiq al-Eid says:

"The Imam's discretion is limited by public interest; it is not for following evil inclinations. Where it is said that the choice of consideration or decision belongs to the Imam, its only meaning is that he will act according to the demands of public interest, not according to whims." (2)

Al-Qarafı says:

"In the case of the Imam, doing what is conducive to the public interest is mandatory; there is no absolute legality for him here. It cannot be that he will do whatever comes to mind according to his own whims and desires in matters of **ta'zir** (discretionary punishment)—avoiding whomever he wishes and accepting whatever he wishes. This is sinfulness and contrary to **Ijma** (consensus)." (3)

Third Effect: The Necessity of Ijtihad.

Therefore, performing what is more beneficial is obligatory. Merely general public interest is not enough. And without expending effort in **ijtihad** (independent reasoning) or research, dedicating full capacity with sincere goodwill towards Muslims, and proper supervision, it is not possible to know which is more beneficial.

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(1) Al-Ghiyathi 270 - 271.

(2) Ihkam al-Ahkam Sharh Ahadith Sayyid al-Anam 4/406.

(3) Al-Furuq 4/142, and see: Al-Furuq 4/95.

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...for their rights. Therefore, understanding the more beneficial matter is dependent on the knowledge acquired about it. And in this case, good intention alone is not enough; rather, it must be accompanied by such **ijtihad** that will reveal the existence of this more beneficial matter.

Taqi al-Din al-Subki says:

"The responsibility entrusted to the Imam or leaders is not so that they issue commands according to their inclinations, or on the basis of superficial opinions, or through blind imitation of what reaches them and by listening to everyone's words. Rather, the responsibility has been entrusted to them so that they perform **ijtihad** and carry out what is beneficial for the subjects through correct righteous deeds, demonstrate devotion to the people, and guide people upon a firm ideal and the straight path." (1)

Fourth Effect: The importance of reaping the benefits of experience and expertise in determining public welfare or Maslaha.

Therefore, exercising Ijtihad regarding public welfare makes it essential to seek consultation, benefit from experts, and utilize previous experience and expertise, which reveals what is most beneficial.

Fifth Influence: The Necessity of Considering Public Interest.

Exercising Ijtihad in performing actions based on public welfare does not only mean practicing Ijtihad on each individual issue according to public welfare; rather, it also demands being diligent toward evident matters of general welfare. This extends the Sharia political perspective toward following those matters that have been regarded as universal and collective public interests based on experience or expertise.

Based on the previous discussion, it can be said that 'Maslahah' or public welfare is a clear and well-defined concept. Although relativity and probability have entered many of its applications, this

does not mean it is an unregulated or vague concept. Rather, some aspects of public welfare are so indisputable that there is no room for disagreement, while some aspects may be subject to debate within specific circles, even if an indisputable core exists. Similarly, there are various ways to perceive public welfare or Maslahah...

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(1) Fatawa al-Subki 1/185.

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...and evident reasons. It is important to emphasize this meaning here because some people assume that linking any ruling to Maslahah or public interest is merely an excuse for personal preference.

The Influence of the Principle of Maslahah (Public Interest) in Siyasah Shar'iyyah (Sharia-based Politics):

This is a major central principle of Siyasah Shar'iyyah, and its influence is extremely broad. This principle can be applied in many fields. Due to its importance, it has been featured in the discussions of many scholars; they have provided evidence through it or relied upon it. In fact, for those who have written about politics, it is one of the fundamental subjects.

Due to the importance of this principle from a political perspective, Ibn Taymiyyah, in his book 'Al-Siyasah al-Shar'iyyah,' relied on it to construct a framework for appointing the most qualified individuals to administrative positions.

The Sheikh did not stop at describing the necessity of appointing the most qualified person to administrative posts; rather, he began to apply this principle while keeping important, changing factors in consideration.

He first decided based on the principle of public interest: it is obligatory to appoint the most

qualified person to administrative positions. (Therefore, for every task of the Muslims, it is obligatory upon the ruler or guardian to appoint the person he finds most qualified for that task.)(1)

And those whom the Imam appoints, (it is the responsibility of each of them to appoint as a representative the person they find most qualified).

...adopting and applying. (2)

Then, based on this principle, he addresses the context of non-Shari'ah reasons in the process of selection, stating: (If he bypasses the most deserving and qualified individual to appoint someone else due to kinship, a post-manumission relationship, friendship, or because they reside in the same country, belong to the same school of thought (Madhab) or spiritual path (Tariqa), or share the same nationality—such as Arab, Persian, or Turk...

(1) As-Siyasah ash-Shar'iyyah 15.
(2) As-Siyasah ash-Shar'iyyah 16.

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...or because of accepting a bribe out of greed for money or some benefit, or for any other similar reason, or due to harboring malice in the heart toward the most qualified person or because of some enmity between them; then he has committed treachery against Allah, His Messenger, and the believers.

Then he establishes that by 'the most qualified' (al-aslah), the intent is whatever is possible according to one's capability. If that is not easily attainable, then it is his duty to choose the person who is relatively more qualified. (He is obligated to appoint only the most qualified from among those available. Among the available individuals, there may not be someone perfectly qualified for that specific position; in such a situation, he shall successively select the one who is more qualified from among those present, according to the importance of each position. If he executes this after putting in full effort and takes up the position while fulfilling its rights, then he has preserved the trust and fulfilled the obligation (Wajib) entrusted to him. In this state, he will be included among the just and fair leaders (Imams) before Allah; even if some deficiency occurs in any matter due to others, provided no other path is possible).

Next, he delves deeper into the meaning of being 'the most qualified' and mentions that there is no fixed standard for every position; rather, being the most qualified for each role depends on the nature of that position. Therefore, (in the context of conducting war, the criteria for qualification are bravery of heart, experience in the art of warfare, and the adoption of military strategy—since war is a strategy—along with proficiency in various forms of combat: such as archery, spearing, striking, horsemanship, attacking, retreating, and similar matters).

(And the criteria for qualification in judicial matters among people are possessing knowledge regarding justice as directed by the Book and the Sunnah, and having the capacity to implement rulings).

He also considers the condition of the Wali (ruler/official); the Wali is the person who has united the two main pillars of 'Siyasah ash-Shar'iyyah,' namely strength and trustworthiness. However, the combination of these two qualities may not always be in equal measure. Sometimes it is seen...

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(1) As-Siyasah ash-Shar’iyyah 17.

(2) As-Siyasah ash-Shar’iyyah 23; see also: Al-Qawa'id al-Kubra 1/105 and 1/171.

(3) As-Siyasah ash-Shar’iyyah 24; and for the description of the meaning of being the most

qualified according to the requirements of each position.

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See: **Al-Qawa'id al-Kubra** by Izz bin Abdus Salam, 1/106 and 107; what Al-Qarafi mentioned in **Al-Furuq**, 2/157 and 3/102; **Al-Dhakhirah**, 2/255-256; **Mukhtasar at-Tirmidhi** by Tufi, 3/173.
(4) **Al-Siyasah al-Shar'iyyah**, 25.

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One of them may be more suitable in a particular quality, and the other in a different quality. (Therefore, in the case of every position, it is obligatory to select the person who is most qualified according to the nature of that role. Thus, if two individuals are identified, one of whom is more trustworthy and the other more powerful/competent; then the one who is more beneficial for that position and through whom the risk of harm is minimized must be given priority. Therefore, in the case of conducting war, the strong and courageous individual will be given preference—even if he has personal failings—over a weak and incapable person, even if that person is trustworthy). (1)

(And in the case of judicial positions, priority will be given to the one who is more knowledgeable, more pious, and more skilled. If one of them is more knowledgeable and the other more pious; then in matters where the rulings are manifest and where there is a fear of following whims or personal desires, the more pious person will be given precedence. And in matters where the rulings are subtle and where there is a fear of doubt, the more knowledgeable person will be given precedence). (2)

He described it in detail from another perspective, stating: (Preference will be given to the more skilled person [i.e., the more knowledgeable and more pious] if the judge is a military ruler or

receives full support from the general public. Conversely, the more capable/powerful person will be given priority if, in conducting judicial proceedings, the need for strength and cooperation is greater than the need for additional intellect and piety in the judge). (3)

Rather, for the same position, a trustworthy person might be more suitable from one perspective, while a strong/competent person might be preferable from another: (When the necessity for trustworthiness is greater, the trustworthy person will be given preference—such as in the safeguarding of wealth and similar tasks. However, in the recovery and maintenance of wealth, both strength/competence and trustworthiness are required). (4)

And if no single individual is found who is capable of performing this duty, then another person can be joined with him: (Similarly, in all other positions, if public welfare is not achieved by a single person, a combination of multiple individuals will be arranged. Therefore, the most qualified person should be given priority, or the number of responsible persons must be increased if full adequacy is not achieved by a single individual). (5)

(1) **Al-Siyasah al-Shar'iyyah**, 27.

(2) **Al-Siyasah al-Shar'iyyah**, 31.

(3) **Al-Siyasah al-Shar'iyyah**, 32.

(4) **Al-Siyasah al-Shar'iyyah**, 31.

(5) **Al-Siyasah al-Shar'iyyah**, 31.

You will notice that Ibn Taymiyyah applied this principle to a specific detail and, through it, opened up broad horizons:

- He distinguished between states of ease and voluntary action and states of constraint and helplessness.
- He considered the relevant public welfare (maslahah) in every administrative responsibility (wilayah).
- He differentiated between the qualities of trustworthiness and strength in every administrative duty.
- He considered which one—trustworthiness or strength—is more suitable to prioritize according to the requirements of each administrative post.
- He performed ijtihad regarding fulfilling such benefits through other maslahah-oriented means that he was otherwise unable to achieve.

This is an example of the breadth of this principle and the potential for its application in vast fields of ijtihad, if an individual can perform it correctly. In an era like our current times, there is an immense field for this unique jurisprudential (fiqhi) application.

Shari'ah-based Maslahah and Contemporary Specialized Disciplines:

The evaluation of maslahah or benefit can sometimes be clear and obvious to everyone, or it may be understood through simple ijtihad. However, many maslahahs are not like this; rather, determining what is more beneficial for people requires experience or specialized knowledge that cannot be attained without the assistance of relevant experts. This makes the necessity of utilizing contemporary specialized sciences inevitable in the effort to ensure public welfare.

Currently, the evaluation of maslahah in many matters has become much more complex than in the past. Therefore, if an individual exerts effort and ijtihad to the best of their ability to achieve maslahah in various areas of life, they may still fail to reach the correct maslahah and will be considered flawed in performing reliable maslahah-based ijtihad.

This is because ijtihad is the maximum application of one's ability to reach the truth, and this is only possible for those who possess the necessary tools. Therefore, an ordinary person unaware of Shari'ah rulings will not become a mujtahid simply by exerting effort in reviewing the rulings until they acquire the necessary qualifications. The same applies to the consideration of maslahah.

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The relationship between the jurist (faqih) and the specialist is a close and complementary one. Regarding jurisprudential issues, to the specialist...

Returns are made to two fundamental matters:

First matter: Determining the scope of the influential Sharia manat (bases); for example: darurat (necessity), hajat (need), mashaqqah (hardship), darar (harm), insignificance, subsequence, and urf (custom).

Second matter: Providing a description and explanation of the actual events related to the ruling, so that its nature becomes clear before the ruling is issued.

On the other hand, the jurist (faqih) is involved with certain matters that do not concern the specialist, and these are:

1- Describing the ruling and determining its conditions and impediments.
2- Determining the criteria for implementing the manat (basis); that is, when will a need or necessity be considered, and when will it not? And what are the criteria for each of these?

3- Establishing takhrij or the determinants of a ruling; such as knowing whether it is a sale or a lease (rental), or whether it is intentional murder or quasi-intentional homicide; because these are jurisprudential characteristics and rulings.
4- Maintaining balance among rulings when a conflict arises between maslahah (benefit) and mafsadah (harm). This is because such a conflict necessitates searching for Sharia-based outweighing reasons, and this is a matter of very subtle jurisprudential perspective.

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Fourth Principle

The Legitimacy of Balancing Benefit and Harm

One of the primary characteristics and attributes of Sharia is that it has come for the purpose of achieving public benefit and preventing harm. Therefore, Sharia has commanded the implementation of whatever is beneficial for people's religion or worldly life, provided it does not result in a greater harm or evil. In the view of Sharia, the importance of considering a benefit increases in proportion to its significance and status. This is a controlling feature over all rulings of Sharia. That is, every ruling of Sharia either achieves a benefit or wards off a harm. When benefit and harm are intertwined, Sharia takes into account the stronger side.

Ibn Taymiyyah says:
"Sharia came to achieve benefits and perfect them, and to abolish harms and minimize them. When one must choose between two beneficial matters, Sharia prioritizes the more beneficial side by sacrificing the lesser one." (1)

Therefore, "All rulings are connected to benefit, even if the aspect of benefit remains unclear to us." (2)

Abu al-Abbas al-Qurtubi, explaining the nature of considering benefit in Sharia rulings, says:

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"The Shari'ah keeps public welfare in view and provides rulings for that purpose, although in many cases it remains silent regarding the explanation of the reasons. When scholars analyzed the matters of Shari'ah, they observed this extensively. Consequently, a comprehensive principle became evident to them, which is: whenever the Lawgiver provides a ruling, He does so for the purpose of some benefit. Subsequently, scholars sometimes find something in the Lawgiver's word that points towards that benefit, and at other times they do not. Then, they thoroughly examine the characteristics of the matter for which the Shari'ah has provided a ruling until a characteristic becomes clear to them that can be considered due to its consistency with the Shari'ah or its suitability."

(1) Majmu' al-Fatawa 30/136, and see: Majmu' al-Fatawa 30/193.
(2) At-Tawdih fi Sharh al-Tanqih 1/250, and see: Mukhtasar al-Tirmidhi 4/540.

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They say: The Shari'ah provides rulings based on public welfare, and public welfare is not independent of the characteristics of relevant matters. Since there is nothing else worthy of consideration among those characteristics, this has been determined. (1)

One aspect of considering public welfare in the Shari'ah is that Shari'ah rulings vary according to the degree of welfare. Therefore, the welfare of obligatory (Wajib) actions is greater than the welfare of recommended (Mustahabb) actions. Similarly, the harm of forbidden (Haram) actions is

more severe than the harm of disliked (Makruh) actions. Likewise, forbidden acts also vary between minor and major sins according to the degree of harm associated with them.

Ash-Shatibi says:

"(Commands and prohibitions are not at the same level regarding the demand for action or avoidance; rather, they are determined according to the degree of welfare resulting from following the command and avoiding the prohibition, and the harm resulting from their violation). (2)"

Izz ibn Abd al-Salam says:

"(Welfare and harm are arranged in various levels. Excellence in this world and reward in the hereafter are determined based on the levels of welfare. Therefore, the greatest major sin is the most severe in terms of harm, followed by progressively less harmful ones. The harms of major sins continue to decrease until they reach a point where, if they were reduced even slightly more, we would reach the highest level of harm of minor sins, which is the second level. Then, the harms of minor sins continue to decrease until they reach a level of harm beyond which we would reach the highest level of harm of disliked (Makruh) acts, which is the second type of harm level. And the harms of disliked acts continue to decrease until they reach a limit where, if removed, we would reach the level of permissible (Mubah) or lawful actions). (3)"

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(1) Al-Mufhim lima Ashkala min Talkhis Muslim 5/379.

(2) Al-Muwafaqat 3/536.

(3) Al-Qawa'id al-Kubra 1/78; and see: Al-Qawa'id al-Kubra 1/77 and 1/41-42.

Al-Qarafı says:

(Because the commands of Sharia follow pure or predominant public welfare, and its prohibitions follow pure or predominant harm. Reward is assigned even to the lowest level of public welfare and recommended (mustahabb) actions. Thereafter, as the merit of public welfare and recommended actions increases and reaches the highest level of recommended acts, the level immediately following it is considered the lowest level of the obligatory (wajib). On the other hand, the lowest level of harm corresponds to the lowest level of disliked (makruh) actions. Then, as the severity of harm and disliked actions increases and reaches the highest level of disliked acts, the level immediately following it is the lowest level of the forbidden (haram).)

At-Tufı says:

(Attention is drawn here to the fact that variations in praise and blame, as well as reward and punishment, depend on the variations in benefit and harm attained through obedience and transgression.)

Therefore, this principle is an effective tool of Siyasa Shar'iyyah or Islamic governance policy. It demands that every responsible individual, from the head of state down to the lower levels, shall make every possible effort to ensure the maximum possible benefit and prevent the maximum possible harm. Therefore, it is necessary to direct all observations and methods of action toward the goal of achieving human welfare and removing harm from them.

There are two levels to this welfare-oriented perspective in Siyasa Shar'iyyah or governance policy:

First Level: Welfare-oriented ijtihad at the primary stage; that is, when there is no conflict between benefit and harm, and multiple harms do not coincide in the same instance. This involves

achieving all benefits and preventing all harms.

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(1) Al-Furuq 2/148; and see: Tanqih al-Fusul 451.

(2) Mukhtasar al-Tirmidhi 2/388; and see in the same sense: Mukhtasar al-Tirmidhi 1/107 and 2/95; also see regarding the variation of rulings according to the variation of welfare: The principle that removing harm takes precedence over achieving benefit, Author: Muhammad Amin Suhaili 95-96.

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In normal or general circumstances, the Sharia-compliant approach is to strive to attain all benefits according to their importance and to prevent all harms according to their gravity. This issue does not create any complexity.

Second stage: Ijtihad concerning benefit and harm in conflicting situations. This occurs when benefit and harm converge in the same context, such that it becomes impossible to achieve a benefit without engaging in harm, or impossible to prevent a harm without abandoning a benefit. This is where complexity arises regarding the method of maintaining a balance between benefit and harm. Do we prioritize and accept the aspect of benefit, even if harm is associated with it? Or do we prioritize the prevention of harm and resist it, even if benefit is lost as a result?

Therefore, we need to know a standard by which it is possible to adopt a superior benefit even if a lesser harm accompanies it, or to abandon a lesser benefit due to the presence of a greater harm.

For this reason, the necessity of external evidence is undeniable.

This is where the famous legal principle of Sharia comes into play: "**Accepting the lesser of two harms to prevent the greater harm**" or "**Performing the superior benefit and (if necessary) accepting the lesser harm.**"

In issues where there is a conflict between benefit and harm, a significant amount of evidence is presented through this principle when issuing rulings. It is regarded as supporting evidence for a ruling, although in reality, it follows Ijtihad and is not a primary source (asl) in itself. This means that the ruling is established based on other evidences, through which it is determined whether a harm is predominant or minor. Consequently, when it is known that a harm is minor, it is discarded. Therefore, this principle is essentially the outcome and impact of acceptable Ijtihad.

Ibn Daqiq al-Eid clarifies the nuance of this discussion and some related complexities, stating:

"(When a conflict arises between benefit and harm, and it is not possible to reconcile both the attainment of benefit and the removal of harm, the comprehensive principles include: prioritizing the higher of two benefits and discarding the lower one; and preventing the more severe of two harms and accepting the lighter one. However, there are some matters where it is clear which one takes precedence, either by considering worldly benefit and harm in light of common practice and real-world circumstances, or by observing those Sharia principles that require prioritizing one matter over another. Furthermore, some matters are so clear that common sense is sufficient to understand them...)"

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...through it; and among these are certain matters that are obscure and cannot be known except through the Sharia granting priority to one over another. The reason for this is that determining the number and magnitude of benefits (maslahat) and harms (mafsadah), and establishing comparative priority between various degrees, is not possible through intellect or reason alone. Rather, an instruction may come from the Sharia to prioritize one matter over another, even if they

appear to be of equal level externally.(1)

Izz bin Abdus Salam, after explaining that most benefits and harms are clear and not hidden, states: "Essentially, disputes have been prolonged and differences of opinion have increased regarding those hidden benefits or harms, the perception and..."

In determining priority or equality among them, people differ according to their level of wisdom and intellect. (2)

For this reason, it is not possible to determine priority solely based on general welfare; rather, it is necessary to focus on Sharia status and fundamental welfare. (3)

The noble scholars have established several specific principles for determining priority, which include:

First Principle: Determining priority based on the strength and importance of the matter:

This entails considering the importance of a matter according to the criteria of the Legislator (Sharia); consequently, in cases of conflict, the stronger matter will be prioritized over the relatively weaker one.

The criteria of strength can be known in three ways:

First Way: The Sharia ruling (Hukum) of the matter:

Based on this, the obligatory (Wajib) is prioritized over the recommended (Mandub), the recommended over the permissible (Mubah), the forbidden (Haram) over the disliked (Makruh), the disliked over the permissible, and the individual obligation (Fard al-Ayn) over the communal

obligation (Fard al-Kifayah), etc.

(1) Sharh al-Ilmam bi-Ahadith al-Ahkam, Ibn Daqiq, 2/497-498.

(2) Al-Qawa'id al-Kubra, 2/194; and see: Al-Qawa'id al-Kubra, 1/30 and 1/80.

(3) See: An-Nukat fil Mukhtalaf, Ibn al-Sam'ani, 2/111-112.

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However, this method is not suitable for all matters, such as a conflict between an obligation (Wajib) and a prohibition (Haram).

Second Method: The strength of the evidence; whether it is definitive or speculative.

Third Method: The status of the matter in terms of the importance given by the Legislator; which is generally divided into three well-known levels:

Necessities (Ad-Daruriyyat): Its solid criterion consists of all those benefits which are absolutely essential for maintaining the interests of religion and the world. In such a way that if these are lost, worldly interests will not be properly managed; rather, chaos, anarchy, and loss of life will occur. And in the hereafter, salvation and blessings will be lost, resulting in manifest loss. (1)

Needs (Al-Hajiyat): These are benefits required to broaden the scope and remove constraints—constraints that lead toward crisis and hardship when desired goals are not achieved. Therefore, if these are not protected, crisis and hardship will overall fall upon the legally responsible individuals (mukallaf), although it will not reach the level of normal disaster expected in the sphere of general welfare. (2)

Embellishments (Al-Tahsiniyyat): These consist of adopting what is appropriate from virtuous habits and avoiding corrupt conditions that people of sound intellect dislike. The chapter on good character encompasses all of these.(3)

Some jurists have another method for distinguishing between these three levels, based on the notion that this distinction pertains to the means, not the primary objective. For example—as an illustration—food has an essential limit that protects life from destruction; there is a needed limit that provides some ease; and beyond that, greater abundance falls into the category of embellishments. The same applies to housing and other objectives.(4)

(1) Al-Muwafaqat 2/ 17 - 18.

(2) Al-Muwafaqat 2/ 21.

(3) Al-Muwafaqat 2/ 22.

(4) See: Nahw Tafsil Maqasid al-Shari'ah, Jamal Atiyyah 51 - 54.

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In a similar vein, Izz al-Din ibn 'Abd al-Salam says: (Worldly welfare and interests are divided into four categories: essentials, needs, supplements, and complements. Essential matters are: for example, food, drink, clothing, housing, marriage, and the means of transport for obtaining the necessities of life and other things that become indispensable. Among these, the minimum level required to meet the need is essential. And among these, what is at the highest level—such as delicious food, very fine and soft clothing, lofty chambers, spacious palaces, expensive vehicles, marrying beautiful women, and obtaining the best female servants—these fall under supplements and complements. And what lies between these two belongs to the category of needs.)(1)

Therefore, here preference will be given to essentials over needs, and to needs over embellishments. (And the impact of this hierarchy becomes apparent during conflicts between

various analogies or rationales. Then preference is given to essentials over needs, and to needs over supplements.)(2)

This level—that is, assigning priority according to the importance and weight of an issue—is an extremely influential and important tool in determining preference (tarjih) from two aspects:

First aspect: Relative systematicity; these are clear principles for distinguishing between issues, through which it is possible in most cases to determine whether an issue belongs to the level of essentials, needs, or embellishments, and also to know at which level of essential, needed, or embellishment the relevant matter stands.

We have used the term 'relative systematicity' because some of these criteria for assigning priority are not perfectly precise. Take, for instance, this tripartite division of essentials, needs, and embellishments; because there is broad scope for ijtihad (legal reasoning) and differences of opinion regarding exactly what matters fall within the boundaries of each of these overall categories.

Second aspect: In terms of impact; this is an influential principle in determining preference. Therefore, it is possible to rely on this when giving priority to essentials over needs, needs over embellishments, obligatory (wajib) over recommended (mustahab), and prohibited (haram) over permissible (mubah). Similarly in other areas as well.

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(1) Al-Qawa'id al-Kubra 2/123.

(2) Sharh Tanqih al-Fusul, Al-Qarafı 393; and see: At-Taqrir wat-Tahbir, Ibn Amir al-Hajj 3/231.

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Second Principle: Granting priority through the general category to which it belongs.

The reason for this is that deep research into Sharia has proven that Sharia was revealed with provisions for the preservation of five fundamental matters. These are: religion (deen), life, intellect, honor and dignity, and wealth (1).

If a conflict arises between two matters, we can derive a solution based on which matter Sharia has given more importance to. Consequently, we will give priority to the category that Sharia has emphasized more over the category that has relatively less importance. However, the condition is that both matters must be at the same level of importance. That is, both must be either 'Daruri' (essential/indispensable), 'Haji' (needed/necessary), or 'Tahsini' (embellishment/complementary). In such a situation, the 'Daruri' aspect of religion will be prioritized over the 'Daruri' aspect of life, and the 'Haji' aspect of intellect will be prioritized over the 'Haji' aspect of wealth, and so on in other cases.

In this regard, although this prioritization is influential, it is not an unchangeable principle that the protection of life will be unconditionally prioritized over the protection of everything at a lower level. Rather, it is merely a prioritizing means. It can be said that it will only gain priority when no other stronger prioritizing factor is present. And it is this very factor that makes welfare-based ijtihad complex in cases of conflict. Knowing which one takes precedence requires such deep ijtihad and competence that it is far greater than the ijtihad required for general rules where no conflict exists.

Some of the factors that influence the equation of arrangement are:

1- Jihad in the way of Allah:

The 'Daruri' level of preserving life will take precedence over a level of preserving religion that is

not 'Daruri'. And for this reason, it is permissible...

(1) A well-known method among scholars is to name these general subjects as the 'five essential matters'. This is because all Sharia has been revealed taking these into consideration. It is either a basic 'Daruri' matter, or a subordinate matter complementary to a 'Daruri' matter. And 'Haji' and 'Tahsini' matters—even though they are associated with one of these five—are considered outside the 'Daruri' matters. See: Al-Mustasfa 1/417, Al-Ihkam (Amidi) 3/274, Al-Bahr al-Muhit 7/266, Al-Mahsul 5/160. There are some issues with this method because mutual overlaps occur; as 'Daruri' matters come as parallel parts of 'Haji' and 'Tahsini'. Again, at the same time, there are 'Haji' and 'Tahsini' matters within these five 'Daruri' matters. See: Ishkaliyatut Ta'sil fi Maqasidish Shari'ah 418-420.

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Consuming dead animals has been made permissible to avoid the loss of one's own life. On the other hand, we see the permissibility of Jihad within the rulings of Sharia, even if it is not indispensable for the preservation of the religion; for example, if an individual wishes to defeat the belligerent disbelievers, it will be permissible even if they must sacrifice their life. This is due to the presence of an influential factor called Jihad.

2- Enjoining good and forbidding evil:

If someone attacks the honor or dignity of a Muslim, it is obligatory for them to protect their dignity, even if they fear losing their life. However, according to the fundamental principle, the preservation of life is supposed to take priority over the preservation of honor. This is because an

influential factor, similar to enjoining good and forbidding evil, exists here. On the other hand, if a woman fears being killed, it may be permissible for her to surrender herself (to the attacker) by prioritizing the preservation of her life. Thus, there is a clear influence of enjoining good and forbidding evil on the criteria of priority.

3- Resisting the attacker:

If someone assaults anyone's property, life, or honor, it is permissible to resist in the least harmful way, even if it results in the death of the attacker. Here, due to the presence of an influential factor, priority has been given to protecting the (owner's) property over the preservation of the (attacker's) life. This is because the Maslahah (welfare) here is not limited to the general matter of preserving life or property; rather, on one side is an attacker's life and on the other is an innocent or protected life, and these two can never be equal.

4- Capability and ability:

If an individual is unable to fulfill a Sharia obligation, it influences the determination of priority among conflicting matters. For example, it is obligatory for Muslims to protect their territory against occupying disbelievers. But if they are incapable of that task and lack the strength to fight, then at that moment, prioritizing the preservation of life is permissible for them. This is not because the preservation of life takes priority over the preservation of religion; for it has been mentioned previously that the preservation of religion...

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(1) Al-Kiya Al-Harrasi says: (We know of no disagreement on this issue that when a group of disbelievers or bandits targets such a weak settlement whose inhabitants do not have the capability to confront those attackers, it is permissible for them to move away from them; although the predestined lifespan or death neither increases nor decreases). Ahkam al-Qur'an 1/220.

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Religion is prioritized, and Jihad in the path of Allah is another example; here, primarily the issue of inability and incapacity has played a role in determining the structure and importance of this *Maslahah* (interest).

5. The Mukallaf (accountable person) engaging in a sin that leads to the reduction of their rights:

An example of this is forcing a transgressor against the truth to acknowledge the truth and remove their transgression; although in this case, the protection of property has been prioritized over the protection of life (even if it is at the level of supplementary or beautification).

Penalties for crimes are also included here. Punishment for committing a crime can be death, amputation, or flogging, which takes away life or destroys some significant utility of life; because such a crime has been committed that has diminished their rights.

6. The possibility of rectification or recovery:

The benefit or interest (*Maslahah*) that can be rectified or recovered is different from a *Maslahah* that cannot be recovered. Therefore, if there is a fear of even minor property loss while performing prayer (Salah), it is permissible to break the prayer for it (1).

Although it was not strictly necessary to mention this last point, as the purpose here was to discuss contrasts; however, there is no real contrast here, as reconciliation between both benefits is possible.

7. Prioritizing the rights of humans over the rights of Allah, because Allah's rights are

established upon forgiveness and forbearance:

An example of this is prioritizing the right of *Qisas* (retaliatory punishment) over the *Hadd* (prescribed punishment) for apostasy (2).

Although fundamentally Allah's right is supreme, another influential characteristic has been added here.

These are some examples of Shari'ah principles that influence the criteria for determining priority and posteriority among various matters. This means that the priority of these overall principles is not always immutable; rather, in cases of equality or when no stronger criterion exists, these are given preference. In such circumstances, priority is determined by the specific interest (*Maslahah*) under which it falls.

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(1) See: At-Taqrir wa al-Tahbir 3/231.
(2) See: At-Taqrir wa al-Tahbir 3/321.

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The matter, as you see, demands a high level of independent legal reasoning (ijtihad) or research, which is completely contrary to many people's perceptions.

Furthermore, when we add the differences of opinion among scholars regarding the hierarchy of

these five interests (masalih), the complexity of the research increases even further.

In terms of prioritizing these fundamental principles (kulliyat), the methodology of the scholars is primarily divided into two streams:

First Stream: Enumeration without specific ranking. That is, simply mentioning them without a clear indication of priority or superiority. These are: religion (deen), life (nafs), intellect (aql), progeny (nasl), and wealth (mal) (1).

Alternatively, listing them as: life, wealth, lineage (nasab), religion, and intellect (2).

Or: religion, intellect, life, lineage, and wealth (3).

Second Stream: Establishing a hierarchy.

Regarding the methodology for this, they have been divided into various opinions, the most notable of which are:

First Opinion: Protection of religion, followed by life, then lineage, then intellect, and then wealth (4).

Second Opinion: Protection of religion, followed by life, then intellect, then progeny, and then wealth (5).

Third Opinion: Giving priority to religion over the other four (6).

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(1) See: Al-Mustasfa 1/417; Tashniful Masami', Al-Zarkashi 3/15.
(2) See: Al-Mahsul, Al-Razi 5/160.
(3) See: Mukhtasar al-Rawdah, Al-Tufi 204; Al-Ihkam fi Ikhtisari Usul al-Ahkam, Ibn al-Lahham 349.
(4) See: Al-Ihkam fi Usul al-Ahkam, Al-Amidi 4/276-277; Nihayat al-Sul, Al-Asnawi 391; Taysir al-Usul ila Minhaj al-Usul, Ibn Ismail Kamiliyyah 6/264; At-Taqrir wa al-Tahbir, Ibn Amir al-Hajj

3/231.

(5) See: At-Tahbir Sharh al-Tahrir, Al-Mardawi 7/3339; At-Tawdih fi Sharh al-Tanqih, Halulu 3/194.

(6) See: Nafais al-Usul fi Sharh al-Mahsul, Al-Qarafi 9/3782; At-Taqrir wa al-Tahbir 3/231; At-Tahbir Sharh al-Tahrir 8/4249.

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Fourth Opinion: Placing religion after the remaining five (1). And there are other opinions besides this (2).

When we keep these differences of opinion in view, the complexity and difficulty of relying on them for prioritization (tarjih) increase. The reason for this is that many people think this rule is very simple; because against every conflicting matter...

...memorize a single example and think it is very easy! In reality, these examples are not derived from the core rule; rather, they were already known through other evidence, and later jurists cited them as examples of the rule. Therefore, when someone tries to use this rule as a permanent criterion for all or most problems they encounter, they fall into a clear error.

Third Rule: Giving priority based on scope.

The objective here is: is it general or specific, holistic or partial? Therefore, a general interest (maslahat) shall prevail over a specific interest, and a holistic interest shall prevail over a partial interest.

Fourth Rule: Giving priority based on the probability of occurrence.

Thus, an interest whose realization is certain shall take precedence over an interest that is merely speculative.

Fifth Rule: A fundamental interest shall take precedence over a subordinate (dependent) interest, and a fundamental interest shall take precedence over a complementary interest.

It is possible to expand further on the criteria for giving priority, such as giving priority based on connection to the Hereafter or this world. However, this is not considered a sufficient criterion; because whether a characteristic belongs to the Hereafter or this world is not enough on its own, since the rulings...

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(1) Nihayat al-Sul, al-Isnawi 391; al-Tahbir Sharh al-Tahrir 8/4249.

(2) For details regarding the differences in the arrangement of these universal principles (kulliyat) and the perspectives of scholars, see: Maqasid al-Shari'ah fı al-Sunnah al-Nabawiyyah, Sa'd al-Kubaysi 565-662; Nahwa Tafsil Maqasid al-Shari'ah, Jamal Atiyyah 28-48; Ishkaliyat al-Ta'sil fı Maqasid al-Shari'ah, A'rak Jabr Shallal 380-385.

The world is connected to the Hereafter, and since there are discretionary (ta'ziri) punishments for sins harmful to the Hereafter, this division is essentially not systematic.

Important Summary of the Principles for Determining Precedence among Conflicting Interests (Maslahat):

1. These rules are merely aids in determining precedence; they are not independent rules, nor are they absolute proofs that can be relied upon like evidence from the Book and Sunnah, nor are they considered a scriptural basis like the effective cause (illah), consensus (ijma), and analogy (qiyas),

etc.

2. The conflict between interest (benefit) and corruption (harm) essentially falls under the category of conflict between rulings. Therefore, acting according to the criteria of benefit and harm means acting upon all evidences and is a form of ijtihad that strives to give priority to what is more prominent by Shariah standards.

3. The precision of the criteria for resolving conflicts between rulings; it aims to give precedence to the better of two benefits and to...

...it demands various criteria to prevent the lesser of two evils. Through these criteria, it is possible to determine the predominant (*rajih*) and the subordinate (*marjuh*) among harmful matters. It is not always correct to prioritize only the benefit (*maslahah*)—where one would accept something for the sake of benefit even if harm is attached to it; likewise, it is not always right to prioritize the removal of harm above all else—where one would sacrifice many benefits just to stay away from harm. Rather, it is a criterion that prioritizes one over the other between two alternatives.

It demands that a scholar applies multiple principles and relies on various perspectives that consider the nature of every matter. Included in these principles are the aforementioned prioritizing factors (*murajjihat*), which vary in terms of impact and strength.

Through this, the error in the methodology of those people becomes clear, who follow a specific method in all or most cases involving a mix of benefit and harm, which is built upon either only accepting benefit or only removing harm (*mafsadah*).

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For this reason, some jurists have mentioned that giving priority to the greater good or preventing the greater evil is only generally applicable; it is not universal for every single matter. (1)

Therefore, determining which is more paramount between benefit and harm is a subtle matter, which is not easy in every field of research. This is because (in terms of probability, a harm that is greater between two harms may be equal to or close to one that is smaller in certain judgment. And there is no way for humans to know the true mystery regarding the extent and quantity of harm and benefit). (2)

4- When it is not easy to know which is more paramount between benefit and harm, it is necessary to adhere to the *Nass* (the text of the Quran and Sunnah) that provides evidence for the principle: (And when harm and benefit are in opposition to each other, it is obligatory to prioritize the one that is more paramount between them. And when we have no knowledge regarding their extent, we return to the *Nass*). (3)

Therefore, in this practical situation, one must adhere to the *Nass* itself, and it cannot be abandoned merely because of a claim of some paramount benefit or harm. Rather, evidence is certainly required in favor of the prioritization of that benefit or that harm.

5- In a conflicting situation of benefit and harm, it may be possible to adopt the path of '*wara*' (piety) and purity as a level of recommendation and perfection. However, this is not possible in all legal issues. Since some instances of conflict occur between the obligatory and the forbidden, it is necessary to have a criterion for prioritizing the more paramount matter; and here, that is '*wara*'. And abstinence is not always '*wara*'.

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(1) See: *Al-Fatawa al-Fiqhiyyah al-Kubra*, Ibn Hajar al-Haytami 3/24.

(2) *Ihkam al-Ahkam*, Ibn Daqiq al-Eid 2/263.

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(3) Sharh al-Ilmam, Ibn Daqiq al-Id 4/489.

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Fifth Principle

Power of Compulsion through Wilayah (Authority)

One of the important jurisprudential means of Siyasah Shar'iyyah (Sharia-compliant politics) is the imposition of obligation through Wilayah. This is because anyone who possesses Wilayah (authority) over a person or group has the power of compulsion derived from Sharia. This obligation has a wide-reaching impact on legal rulings, which becomes strong based on the nature of said Wilayah. Therefore, an important aspect of Siyasah Shar'iyyah is being aware of the jurisprudence (Fiqh) of Wilayah and its boundaries.

What is meant by Wilayah is: it is a Sharia-based power that an individual exercises in managing a matter, and through it, compels another individual or group in that regard. (1)

Wilayah or Authorities in Islam:

In Islamic Sharia, Wilayah can be primarily divided into two types:

First type: General Authority (Wilayah Ammah), which involves overseeing the affairs of the general public; it is not limited to authority over a specific person.

Second type: Specific Authority (Wilayah Khassah), which is associated with authority over a specific individual.

The Objective of Authorities:

The objective of these two types of Wilayah and everything included under them is to ensure the welfare of people's religion (Deen) and worldly life (Dunya).

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(1) Nazariyyat al-Wilayah, Nazih Hammad, page 8; Ahl al-Dhimmah wa al-Wilayat al-Ammah fi al-Fiqh al-Islami, page 27.

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Ibn Taymiyyah says: (The essential objective of state responsibility and power is: the reformation of people's Deen (religion) or way of life. When it is lost to them, they face clear loss, and whatever they enjoyed in this world will not benefit them; and the reformation of their worldly affairs, without which the establishment of Deen is not possible.) (1)

And he further says: (If the purpose of power and wealth is to attain proximity to Allah and to spend it in the way of Allah, then it will be the cause of reformation of both Deen and the world. But if power becomes separated from Deen and Deen from power, the condition of the people will be ruined.) (2)

First Category: General State Responsibilities:

These are of several types:

1 - Imamate and Great Leadership:

This is the most important state responsibility, from which all other responsibilities originate. The authority of the Imam in conducting public welfare activities is very broad. For this reason, fulfilling this responsibility is one of the most powerful means of Sharia-compliant politics.

Due to the importance of this position and the immense public welfare achieved through it, the Sharia has praised the just Imam who protects the rights of the people and prevents oppression against them. Narrated from Abu Hurayrah (RA), the Prophet (SAW) said: (Seven types of people Allah will shade under His shade on the day when there will be no shade except His: a just Imam...) (3)

And the Prophet (SAW) said: (Verily, the just will be with Allah on pulpits of light, on the right hand of the Merciful, the Mighty and Sublime—and both His hands are right; those who are just in their judgment, in their families, and in the responsibilities entrusted to them.) (4)

(1) As-Siyasah ash-Shar'iyyah, page: 37; and see: At-Turuq al-Hukmiyyah, vol: 2, page: 623.
(2) As-Siyasah ash-Shar'iyyah, page: 193.
(3) Imam Bukhari (660) and Muslim (1031) have narrated this.
(4) Imam Muslim (1827) has narrated this.

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These types of descriptions inspire those in charge—especially those holding the highest leadership positions—to establish justice and warn them against oppression. This is because the reward for their justice is very great, as it has a massive impact and a large-scale...

...public welfare is contained. And the consequences of their oppression are also terrible, as it results in extensive harm and disaster (1).

Izz ibn Abdus Salam states:

(And the Muslims have reached a consensus that the administration of governance is among the best acts of worship and obedience. And just rulers hold a status and reward higher than others; because through them, a vast amount of truth is established and falsehood is eradicated. One of them utters just a single word, through which he prevents a hundred thousand or more/less acts of oppression, or brings a hundred thousand or more/less benefits. How simple the words are, yet how immense the reward!)

Conversely, evil rulers and oppressive judges are the greatest criminals among people in terms of sin and the lowest in rank before Allah. Because through them, extensive harm is wrought and great public welfare is obstructed. One of them utters such a word due to which he becomes involved in a thousand or even more sins—corresponding to the extent of the harm of those words and according to the amount of benefit he prevents from the Muslims through those words. What a loss-making contract and destructive business this is!) (2).

He also says: (In conclusion, according to the consensus of the followers of Islam, those among the Imams and rulers who are just, are possessors of more reward than all other people) (3).

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(1) For discussion regarding the virtues of a just Imam and warnings against oppression, see: Hasanus Suluk al-Hafiz Dawlatul Muluk, al-Mawsili 56-66; Izah Turqul Istiqamah, Ibnul Mubarak 84-86; Risalatu fil Imamitil Uzma, Miara 132-135; Sirajul Muluk 159-180; al-Jawahirul Mudiyyah fi Bayanil Adabis Sultaniyyah, al-Munawi 109-140; Ash-Shihabul Lamiah fis Siyasiyatin Nafiah, Ibnu Ridwan al-Maliki 33-43; An-Nahjul Masluk fi Siyasalitil Muluk, Ash-Shaizari 95-77.

(2) Al-Qawa'id al-Kubra 1/198.

(3) Al-Qawa'id al-Kubra 1/199.

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Ibn Taymiyyah says:

(It must be known that fulfilling the responsibility of managing human affairs (Wilayah) is one of the most essential duties of the religion; rather, neither the religion nor worldly life can be established without it. For the mutual interests or welfare of the children of Adam do not attain fulfillment without being organized collectively) (1).

The noble Ulama have mentioned several conditions for the one who takes on the responsibility of this "Imamat al-Uzma" or supreme leadership (2). The primary conditions among these are: Islam, sound mind (Aql), reaching maturity (Bulugh), being male, and justice (Adalat), etc. (3).

In the case of these conditions, it is necessary to distinguish between normal circumstances (while there is the opportunity for choice) and emergency circumstances (incapacity):

In ordinary or normal circumstances, it is essential that these conditions are fully present; rather, merely achieving the minimum standard of eligibility for leadership is not enough, but rather, it is necessary to ensure the most qualified and best person among the people. However, this ideal state is not always realized, and it is not easily available in all eras and places. For this reason, when it is not possible, the matter needs to be reconsidered; and that is:

An inescapable or emergency situation; that is, when an ideal system cannot be achieved without discord, civil strife, mutual fighting, and the destruction of the blood and property of Muslims. In such a situation, the instruction of Shariah is to consider these matters and, for the purpose of preventing greater harm when there is no capability, not to pay heed to the non-fulfillment of certain conditions.

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(1) As-Siyasa ash-Shar'iyyah, page 191.
(2) See: Al-Fasl fil Milal wan Nihal 5/399; Rawdatut Talibin 7/262; Sharhu Muntahal Iradat 3/388; Tahrirul Ahkam li-Ibni Jama'ah 16; Ma'asirul Inafah lil-Qalqashandi 23-26; Raddul Muhtar 'ala al-Durril Mukhtar 2/280; Al-Ahkamus Sultaniyyah li-Abil Ya'la 20; Idahu Turuqil Istiqamah 34-36; Al-Ghiyathi 254-264; Bada'ius Suluk li-Ibnil Azraq 72, 180; Rawdatul Qudat wa Tariqun Najat 1/61-66; Risalatul Imamatil Uzma li-Muhammad Miyara 96-98; Al-Ajwabatul Hisan fil Khilafati was Sultani li-Abdil Qadir al-Fasi 146-150; Tuhfatut Turak fima Yajibu an Ya'mala fil Mulk lit-Turtushi 115-116; Al-Jawahirul Mudiyyah fi Bayanil Adabis Sultaniyyah 89-92; Al-Wilayat lil-Wansharisi 127-128; Al-Fawakihud Dawani 1/106; Nihayatul Muhtaj 7/409-410.
(3) For a detailed discussion of the conditions and the differences of opinion regarding them and their rulings, see: Al-Intikhabat wa Ahkamuha fil Fiqhil Islami 286-304.

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To implement this beneficial meaning, many authentic Prophetic traditions have been narrated that forbid rebellion and fighting due to injustice or oppression committed by the ruler. Among them are:

It is narrated from Awf bin Malik that the Messenger of Allah (peace and blessings of Allah be

upon him) said: **“Your best leaders are those whom you love and who love you; who pray for you and you pray for them. And your worst leaders are those whom you hate and who hate you; whom you curse and who curse you.”** It was asked: O Messenger of Allah! Shall we not confront them with the sword? He said: **“No, as long as they establish prayer among you. And when you see something objectionable in your rulers, then hate their actions, but do not withdraw your hand from obedience.”** (1)

It is narrated from Umm Salamah that the Messenger of Allah (peace and blessings of Allah be upon him) said: **“In the near future, there will be rulers whose many actions you will recognize (as good) and many actions you will dislike. So, whoever (sin) recognizes it and stays away from it is free from liability, and whoever hates it (in their heart) is saved; but whoever is pleased with it and follows it (will be ruined).”** They asked: Shall we not fight against them? He said: **“No, as long as they perform the prayer.”** (2)

However, there is a special exception here regarding the condition of Islam, and that is due to the importance and impact of this condition. For this reason, the exception is discussed in the Hadith of Ubadah bin Samit (may Allah be pleased with him); he said: **“The Messenger of Allah (peace and blessings of Allah be upon him)...**

...(the Prophet, peace be) upon him called us and we pledged allegiance to him. Among the things he took a pledge from us on was—that we listen and obey in enthusiasm and disinclination, in hardship and ease, and even if others are given preference over us; and that we do not dispute with those in authority—unless you see clear disbelief regarding which you have indisputable proof from Allah.” (3)

Qadi Iyad says: **“The esteemed scholars have agreed that leadership (Imamate) cannot be established for any disbeliever. And if disbelief arises in someone while in a position of leadership, he shall be deposed.”** (4)

(1) This was narrated by Muslim (1855).

(2) This was narrated by Muslim (1854).

(3) This was narrated by Bukhari (7202) and Muslim (1709).

(4) Commentary of Imam Nawawi on Sahih Muslim, 12/238; and see: Fath al-Bari, 13/123.

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However, this is conditional upon ability and capacity like other obligations. Ibn Hajar says: “They did not exempt anything from this, only if clear disbelief becomes apparent from the Sultan; in that case, it is not permissible to obey him regarding that matter, rather, it is mandatory to perform Jihad against him for those who have the capacity.” (1)

And if the Muslims are not capable of it: “If such a situation arises, then it will be mere political following, not any legitimate authority. The obligation upon them will be due to the necessity of obedience, not due to the ruler's command.” (2)

As a result, this ruler remains only a titular ruler. And the regulations that are in favor of justice and public interest continue to be effective because of the inherent welfare and benefit to people within them, not because they are issued by him.

Responsibilities of the Ruler:

Al-Mawardi has described what is mandatory for the Imam or ruler in his book 'Al-Ahkam as-Sultaniyya' and has limited them to ten basic responsibilities, which are:

1. Preserving the religion according to the principles upon which the predecessors of the Ummah reached a consensus.
2. Adjudicating between disputing parties and resolving the conflicts between them.

3. Protecting the integrity of the state and safeguarding protected matters (women and property) so that people can remain safe in their way of life.

4. Establishing the penal code.

5. Securing the border areas.

6. Waging Jihad against those who remain in disobedience to Islam even after the invitation.

7. Collecting spoils (Fai) and charity.

8. Determining the amount of stipends and entitlements from the public treasury.

(1) Fath al-Bari 13/7.

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(2) Qalyubi's Gloss on Sharh al-Mahalli 2/497.

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9. Appointing trustworthy individuals and assigning responsibilities to sincere well-wishers.

10. Personally supervising matters and conducting the administration of the subjects (1).

Rights of the Authority Figure:

The Imam has certain rights over the subjects, the primary ones among which are:

1. Obedience in righteous deeds.

2. Praying for him.

3. Providing sincere counsel.

4. Cooperation in righteous deeds (2).

Theoretical Analysis of the Position of Authority in the Case of the Imamate:

Contemporary researchers have focused on determining the basis for the contract of the Imamate, such as analyzing it based on agency (representation) or leasing (contractual employment). They have critiqued the expression established in the discourse of the jurists that "authority is the representation of Sharia."

The actual truth is that this is an irrelevant terminological disagreement. This is because the contract of the Imamate is essentially a contract of specific authority. It is not correct to analyze it based on a specific contract of agency or a specific contract of lease; rather, it is such a representation...

(1) See: Al-Ahkam al-Sultaniyyah 51-52, Al-Ghiyathi 328 and 336-343, Tahrir al-Ahkam 21-23, Rawdat al-Quzat 1/68-69, Al-Jawahir al-Mudiyyah 66-73 and 151-186, Mu'id al-Ni'am wa Mubid al-Niqam (by Taj al-Din al-Subki) 21-24, Naqd al-Talib li-Zaghal al-Manasib (by Ibn Tulun) 27-30. Regarding the scholars' following of the description of these ten duties, see: Izah Turuq al-Istiqamah 68-70, Masair al-Inafah 35-36, Ash-Shuhub al-Lami'ah fi Siyasat al-Nafi'ah 25.

(2) Regarding the rights of the Imam, see: Izah Turuq al-Istiqamah 140, Masair al-Inafah 36, Tahrir al-Ahkam 19-21, Al-Jawahir al-Mudiyyah fi Bayan Adab al-Sultaniyyah 141-150, Rawdat al-Quzat 1/68-69.

Or this is a special type of ijara (contract), the provisions of which are derived from the very nature of this contract. Therefore, there is no merit in explaining it based on any known contract.

The purpose of describing representation (niyabat) from the perspective of Sharia is the ruler's accountability regarding Sharia obligations or duties under the Imam's authority. It has no connection with attributing "masumiyat" or infallibility to the ruler's actions, nor with the theocratic rule of European history. This expression also does not deny being a representative (wakil) on behalf of the people and fulfilling responsibilities for them. For this reason, some jurists have reconciled both expressions. Ibn Taymiyyah states: "Indeed, creation consists of the servants of Allah, and the rulers are Allah’s representatives over His servants. They are representatives of the people over their lives and property, just as one partner stands in for another partner. Therefore, both the meanings of guardianship (wilayah) and representation (wakalah) are present within them." (1)

Authorities or positions below the rank of the Imam are divided into four categories by former jurists:

First Category: Those whose authority is general or comprehensive regarding general functions; they are the wazirs or ministers.

Second Category: Those whose authority is general or comprehensive regarding specific functions; they are the amirs or governors of various regions.

Third Category: Those whose authority is specific or limited regarding general functions; they are the Chief Justice, the military leader (naqib), border guards, and zakat collectors.

Fourth Category: Those whose authority is specific or limited regarding specific functions, such as a judge (qadi) of a city or a collector of a specific kharaj (land tax). (2)

2 - The Position of Vizier (Al-Wizarah):

This is an authority known to the jurists, which was prevalent from the Abbasid rule and was

divided into two types:

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(1) Al-Siyasah al-Shar’iyyah, page 21.

(2) See: Al-Ahkam as-Sultaniyyah, Al-Mawardi page 6; Al-Ahkam as-Sultaniyyah, Abu Ya’la page 28.

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Delegated Viziership: This is a form of viziership where the Imam delegates the responsibility of managing all affairs to the vizier according to the vizier's own opinion and ijtihad (independent legal reasoning). Consequently, the vizier independently carries out matters, reviews judicial complaints (mazalim), appoints governors, and manages the conduct of war. (1)

Executive Viziership: Here, the role of the vizier is limited to acting as an intermediary between the Imam and the public. He conveys the Imam's orders and implements his decisions. The Imam may take his opinion and advice, but he is not independent of the Imam's authority. (2)

Contemporary ministries are different from this form of viziership. Because according to the nature of modern ministries, they possess many powers and are not limited to just disseminating orders and instructions. In managing affairs, they possess many powers similar to 'Delegated Viziership', although this varies according to the nature of each ministry. Generally, contemporary ministers do not independently handle appointments, wars, and matters of oppression or injustice, as was the case with the 'Delegated Vizier' in Islamic history.

3. Emirate: According to the jurists, it is of two types:

First Type: General Emirate. This is again divided into two parts: governance entrusted to an emir by the Imam through a voluntary contract based on merit (Wilayat al-Istikfa);

And power entrusted through a contract with the Imam under compulsion (Wilayat al-Istila). This occurs when someone seizes a specific region by force, and then the Imam grants him the responsibility of governance so that his decisions become effective.

The power of this Emirate is very extensive. It includes—overseeing the appointment of judges (qadis), collecting zakat, implementing penal codes (hudud), leading Friday and congregational prayers, managing the Hajj, Jihad, and other matters.

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(1) See: Al-Ahkam al-Sultaniyya, Al-Mawardi, pp. 35-38.
(2) See: Al-Ahkam al-Sultaniyya, Al-Mawardi, p. 36; Ghiyath al-Umam, p. 72; Tahrir al-Ahkam, p. 24; Ma'athir al-Inafah, p. 41; Ad-Dhakhira, 10/30.

Second Type: Special Emirate: This will be limited only to leading the army, governing the subjects, and protecting the territory; it shall not interfere in judicial matters, legal rulings (ahkam), tax and charities (sadaqat). (1)

The opinion regarding the Emirate seized by force (Imarat al-Istila) is related to a historical matter. Room for such an opinion has been made for the sake of protecting rights. Otherwise, the basic principle is that, without special necessity, no

It is not permissible for an Amir to act outside the obedience of the Imam (the Head of State).

This classification of the Amirate, the matters falling under each jurisdiction, and the various types of ministry (Wizarat) mentioned earlier are primarily matters of custom, which revert to a political perspective oriented toward public welfare. Consequently, the ruler manages these administrative sectors in accordance with public interest. Therefore, administrative posts and the matters within their jurisdiction are subject to change based on time and place. Thus, judicial powers, Hisbah (supervision), or matters under other offices vary according to the customs and regulations of each country. There is no strict requirement for the specific specialized functions defined by jurists to remain identical. (2)

Ibn al-Qayyim (may Allah have mercy on him) stated: (Whether administrative positions are general or specific, and what an appointee derives from such a position, are essentially based on terminology, surrounding circumstances, and established custom. Shariah does not set a fixed limit for this. A matter falling under judicial authority at a certain time and place might come under the conduct of war at another time and place, and vice versa. The same applies to positions related to Hisbah and finance. Fundamentally, all these administrative positions carry religious status and Shariah responsibilities. Therefore, whoever exercises justice in any of these administrative duties, manages them with knowledge and fairness, and obeys Allah and His Messenger to the best of their ability, will be among the righteous and just. Conversely, whoever governs with ignorance and oppression will be among the wrongdoers and transgressors.) (3)

(1) See: Al-Ahkam al-Sultaniyyah, Mawardi 72-78; Al-Ahkam al-Sultaniyyah, Abu Ya'la 34-38.
(2) See: Al-Siyasah al-Shar'iyyah 193-194; Al-Dhakhira 10/58; Al-Turuq al-Hukmiyyah 2/626-627;

Tabsirat al-Hukkam 1/14 and 2/146.

(3) Al-Turuq al-Hukmiyyah 2/626-627.

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In the early era, the Caliph would appoint a single judge known as the Chief Justice. He would appoint judges for all other regions. Later, this system was abandoned, and a rule was established to appoint one judge in each region, who was designated as the Chief Justice; he would supervise his subordinates. Subsequently, after the legal schools (Madhabs) became well-established, the practice began of appointing one judge from each of the four Madhabs in every region (1).

Regardless of the form of ministry or leadership in history or the present day, it is merely a difference of custom that holds no theoretical weight. Rather, what is significant is considering current state positions—under any name or system—in light of the conditions prescribed by jurists for such roles, based on the similarity of their functions. For example, in Islamic history, executive leadership (Wilayat al-Tanfidh) was a position where the ruler was not independent in decision-making; instead, his role was strictly to convey orders. Consequently, jurists showed some flexibility regarding certain conditions, such as Islam and status as a free person, for this post (2), as it did not possess independent authority. Conversely, if the position entails independence and administrative power, these conditions cannot be waived. This can only be understood by grasping the nature of each individual post.

For this reason, jurists have stipulated knowledge of Shariah rulings as a requirement for those in charge of leadership and ministries, as judicial rulings are part of their scope. However, if leadership or a ministry does not involve adjudicating between people—such as military leadership and national defense—then possessing this knowledge (Shariah knowledge) is not a mandatory condition (3).

Therefore, the conditions mentioned by jurists regarding leadership or ministries were determined

based on the functions associated with those roles according to the customs of their time. Hence, if the functions for which the conditions were imposed change, it impacts whether those conditions remain necessary. In other cases, it may have no impact at all.

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...when the condition is not related to the duties of that position.

(1) Note: Izahu Turuq al-Istiqamah 76-77; and see: Atharu al-Urf fi Wilayati Iqamat al-Salat al-Jumu'ah: Al-Muhit al-Burhani, Ibn Majah 2/69.
(2) Note: Ad-Dakhira 10/30, Al-Ahkam al-Sultaniyyah, Mawardi 38.
(3) Note: Al-Ahkam al-Sultaniyyah, Mawardi 76, Al-Ahkam al-Sultaniyyah, Abu Ya'la 29-37, Ghiyath al-Umam 74-75, Ad-Dakhira 10/29-32, Tahrir al-Ahkam 26-27, Tabsirat al-Hukkam 1/21.

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4. Judicial System (Al-Qada):

It is a well-known administrative responsibility, and several branch responsibilities are included under it. Jurists (Fuqaha) have placed the most emphasis on this duty. They have described in detail its regulations, the conditions for the office holders, and the etiquette for judges and litigants. Scholars (Ulama) were primarily the experts in this field, so much so that many people began to think that the 'judicial system' was the only administrative responsibility compliant with Sharia. This is a long-standing misconception. Ibn Taymiyyah, while explaining the nature and source of this error, says:

“Any action that follows obedience to Allah and His Messenger will be considered a Sharia-compliant duty. And any action that is contrary to this or in which mandatory duties are

abandoned will not be considered a Sharia-compliant duty. But because judges were closer to knowledge and the community of scholars and were better informed about Sharia, many people began to think that there is no need to apply Sharia rulings in administrative duties other than the judiciary. They often think that Sharia only means what the judge decides. Many times they flee from this Sharia—perhaps due to a deviation or negligence on the part of some judge. Yet the matter is not like that at all; rather, Sharia is the name of that Book and Wisdom which Allah Almighty revealed to His Messenger Muhammad (peace be upon him) and whose laws are mandatory for all creation to follow. Therefore, the duty of every administrative official is to follow this Sharia. In many cases, representatives, governors, and Muhtasibs (supervisors) act in accordance with Sharia, and again sometimes the judges themselves act against it—perhaps out of ignorance, or for some malicious intent, or due to blind imitation of some scholar, or for some other reason."

5. Grievance Redressal Department (Wilayah al-Mazalim):

It is even more powerful than the general judiciary. It possesses such influence and power in suppressing the obstinacy of litigants and resisting oppressors that general judges do not have. For this reason, it is specialized for redressing the oppression of rulers over subjects and removing the injustices of officials in the collection of wealth and taxes. Additionally, hearing complaints regarding the livelihood and salaries of subjects and implementing matters that a judge or Hisbah inspector is unable to carry out are responsibilities vested in it. Consequently, its scope and capability are much broader than those of the judiciary.

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(1) There are several other branch responsibilities derived from the judiciary, see: Tabsirat al-Hukkam 1/20-21.

(2) Al-Siyasa al-Shar'iyyah 192.

(3) See: Al-Ahkam al-Sultaniyyah, Al-Mawardi 152-156; also see: Ad-Dakhira 10/39, Tabsirat

al-Hukkam.

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Hukkam 2/147, Al-Ulayat, Al-Wansharisi 169-172.

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Therefore, at that time, the ‘Mazalim’ (Judiciary of Injustices) department was a conventional authority whose purpose was to consider certain matters of oppression involving powerful individuals. Consequently, there was a need for such a higher judicial authority that would be capable of reclaiming people's rights from them. For this reason, this authority was more extensive than the ordinary judicial system in two aspects:

1. Influence and Power: It could execute all such verdicts and consider matters that were impossible for ordinary judges, because those matters involved powerful individuals.

2. Expanding Judicial Scope to Reach the Truth: It involved intimidating the disputing parties and utilizing such evidence and signs that ordinary judges did not employ.

Ibn al-Arabi, while explaining and critiquing the conventional status of this authority, says:

“(And the Mazalim or the department for judging injustices is a peculiar authority, which later rulers devised due to the decline of the administrative system and human character. It is essentially an expression of every decision that an ordinary judge (Qadi) is unable to deliver, resulting in it being overseen by someone whose hand is more powerful than his (the judge's). The reason is that when a dispute is between two weak parties, the Qadi empowers one of them. But

when a dispute is between a powerful and a weak person, or between two powerful individuals, and one of them possesses power due to their rank—such as oppression committed by Emirs or officials—then this is a matter for which the Caliphs themselves would preside. Abdul Malik ibn Marwan was the first to preside over this, but he referred it to his Qadi, Ibn Idris. Later, Umar ibn Abd al-Aziz presided over it and returned the injustices committed by the Umayyads to the victims; because it was in the hands of those rulers and rebels whom the Qadis were unable to judge. Subsequently, this became a tradition, and as a result, the Abbasids began to preside for the conduct of its judicial affairs. An ancient account mentions that its original foundation was part of the judiciary itself, but rulers weakened the judicial structure so they could exploit the weakness of the subjects and make people dependent on them. Consequently, the rulers would turn away from the people, and the injustices would persist as they were) (1).”

And other ranks or authorities (2).

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(1) Ahkam al-Quran, Ibn al-Arabi, 4/61.

(2) And those are ten: Ministry (post of Vizier), administrative leadership, judiciary, Mazalim (judiciary of injustices), military leadership, post of representative or tribal chief, supervision of establishing daily and Friday prayers, leadership of performing Hajj, collection of Zakat, and Hisbah or public welfare supervision.

Second Type: Special Guardianship

Special guardianship refers to an authority through which a guardian is empowered to manage the personal and financial affairs of the person under their charge (1).

Types of Special Guardianship:

Special guardianship is of two types:

First: Guardianship over the person; and this involves guardianship over the being of a minor and matters related specifically to them—such as providing for marriage, education, medical treatment, and employment.

Second: Guardianship over property; and this pertains to guardianship over their financial matters, such as the execution of various contracts, transactions, and the management of expenditures (2).

Guardianship is primarily established based on three fundamental reasons:
1. Minority (childhood).
2. Insanity.
3. Mental deficiency (3).

Another influential factor is femininity; however, this is associated with a limited scope. This is because femininity involves guardianship for marriage and the matter of living in a residence separate from parents (4).

Note: Ma'ahir al-Inah 41-43; and see: Ahkam al-Qur'an, Ibn al-Arabi 4/60-63; Al-Wilayat, Wansharisi 129-139.
(1) Note: Al-Madkhal al-Fiqhi al-Aam, Zarqa 2/843; Wilayat al-Ta'dib al-Khassah, Ibrahim at-Tamm 26.

(2) Note: Al-Madkhal al-Fiqhi al-Aam 2/845; Nazariyyat al-Wilayah, Nazih Hammad 51-52.

(3) Note: Al-Wilayah 'ala al-Nafs, Muhammad Abu Zahra 15; Nazariyyat al-Wilayah 70-71.

(4) Note: Al-Wilayah 'ala al-Nafs, Muhammad Abu Zahra 44.

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The second issue relates to the legal provision regarding a daughter’s independence from her guardian (1).

One of the consequences of guardianship is the right to teach etiquette or discipline (Salahiyyatut Tadib). Guardianship is a more comprehensive concept, and its scope is very extensive. Included within it is governing for the purpose of reform, which is essentially a method of nurturing (tarbiyat). This involves supervising an individual in a manner that facilitates their rectification and well-being (2).

The difference between discipline (Tadib) and punishment (Tazir) is that the guardian carries out the act of governing or teaching etiquette. On the other hand, punishment or Tazir is administered by the Imam (head of state) or his representative. Furthermore, punishment is linked to a judicial verdict; consequently, it is mandatory to hear evidence and testimony, which is not required in the case of discipline (Tadib) (3).

Therefore, this Sharia-based guardianship is the entrustment of the responsibility of managing someone's personal and financial affairs to an individual who will protect their rights and fulfill their obligations. This is established due to a deficiency in the competence (Ahliyyat) of the

individual, until such time as they attain full competence (4).

(1) Scholars have differed on this matter. According to the Malikis and Hanbalis, it is not permissible for her to remain separate from the guardian. This is an opinion of the Shafi'i school that applies to virgin daughters, but not to widows. According to other Shafi'i scholars, if there is no room for doubt, then she can live wherever she wishes, whether she is a virgin or a widow. The Hanafi view is also close to this if there is no fear of danger regarding her; however, if she is a minor virgin, the guardian has the right to do so. See: Al-Bahrur Raiq 4/183; Hashiya Ibn Abidin 3/538; Ash-Sharhul Kabir 3/293; Hashiya Al-Adawi 5/291; Rawdatut Talibin 9/102; Nihayatul Muhtaj 8/363; Asnal Matalib 3/449; Al-Mughni 8/239; Al-Insaf 9/432.

(2) See: Wilayatut Tadib Al-Khassa, pages 16-17; also see: page 72. To learn in detail about the method of discipline and its boundaries, see pages 322-452 of the same book.

(3) See: Wilayatut Tadib Al-Khassa, pages 69-70.

(4) For the definition and types of competence (Ahliyyat), see: Al-Madkhalul Fiqhil Amm 2/783-785. For the various levels of competence and related regulations, see: Ahliyyatul Mar’ah fil Fiqhil Islami, Author: Ghada Al-Masri 1/42-57.

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Chapter Five

Applications of Siyasah Shar'iyyah

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Chapter One

Historical Fiqhi Applications

The history of Fiqh is extremely rich, and Fiqhi compilations are full of numerous examples of the application of 'Siyasa al-Shar'iyyah' (Sharia-based governance), where caliphs or jurists (fuqaha) exercised ijtihad to achieve public interest in accordance with the objectives of Sharia. These are extremely numerous and spread across various fields, making it impossible to count them. For this reason, we will discuss some selected applications from among these (1), which include:

- Imposing restrictions on women going to the mosque:

There is a famous narration from Aisha (may Allah be pleased with her) on this matter; she said: "If the Messenger of Allah (peace and blessings of Allah be upon him) had seen what women have introduced after him, he would have surely forbidden them [from going to the mosque], just as the women of the Children of Israel were forbidden." (2)

This means that the permissibility that existed during the era of the Prophet (peace and blessings of Allah be upon him) was based on a situation where there was no fitnah (strife/tribulation) and no laxity in performing obligatory duties. Therefore, when the condition of people changes, the ruling also changes to prevent such harm.

Ibn Battal says:
"And this [the original ruling] is applicable only when there is no fear of fitnah concerning them or caused by them; because that was the condition of the majority of people of that era. And in the hadith of Aisha (may Allah be pleased with her), there is evidence that women should not go out..."

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(1) Some of these applications are not related to political matters connected with the ruler's

methods of operation; rather, some of them are related to family matters. I have included them here as applications related to 'Siyasa al-Shar'iyyah' because they are connected to public interest and are present in the prevailing influential perspectives in political matters, as previously mentioned in the discussion of the characteristics of influence and perspectives. Furthermore, in most cases, these are also related to the work of judges.

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(2) This was narrated by Bukhari (869) and Muslim (445).

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...when disorder appears among people in mosques. And this is because, at that time, one can remain free from the fear of harm.

Ibn Rajab says:
(Aisha—may Allah be pleased with her—indicated that the Prophet—peace and blessings of Allah be upon him—used to permit certain matters in which there was no disorder during his era, but later disorder appeared and new situations arose after him. Therefore, if he had seen what happened after him, he would not have continued this permission; rather, he would have forbidden it; for he only commanded reform and forbade disorder).

And what women had newly introduced was their transgression regarding beautiful clothing, adornment, and the use of perfume.

This ijtihad is the personal opinion and part of the ijtihad of Aisha (may Allah be pleased with her); it is not a Sunnah attributed to the Prophet (peace and blessings of Allah be upon him). She made it dependent on a condition that was not present; she stated based on her own perspective that "if

he had seen it, he would have surely forbidden it." In response, it is said: since he did not see it and did not forbid it, the ruling shall continue.

Based on this perspective of Aisha (may Allah be pleased with her), differences of opinion have arisen among scholars regarding (women) going out to the mosque and the conditions for it.

In taking evidence from this ijtihad of Aisha (may Allah be pleased with her), we see that the jurists are divided into two streams:

The first stream: Those who accept its literal meaning that it is valid for the ruling to change here due to the change of times and the emergence of fitna (trial) or disorder. They believe that the ruling has changed from the state it was in during the time of the (Messenger)...

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(1) Sharh Sahih al-Bukhari, Ibn Battal 2/471; and see: Sharh an-Nawawi ala Sahih Muslim 6/168.

(2) See: Sharh an-Nawawi ala Sahih Muslim 6/178.

(3) Fath al-Bari, Ibn Rajab 8/41.

(4) See: Ikmal al-Mu'lim 2/355, Sharh an-Nawawi ala Sahih Muslim 4/164.

(5) Fath al-Bari 2/349.

(6) See the opinions of scholars in At-Tamhid: Ibn Abd al-Barr 23/401-404, Fath al-Bari, Ibn Rajab 8/41-42.

...during the time of the Prophet (PBUH). This is the approach of the majority of jurists, although there are differences among them regarding its ruling. Consequently, some have specified the ruling as 'makruh' (disliked) for certain women or in certain places, while others have prohibited it for all women (1).

Second View: Those who do not act according to its outward appearance, but rather remain steadfast on the fundamental principle of the permissibility of this act during the era of the Prophet (PBUH). It would be disliked (makruh) for a husband to prevent his wife if she requests permission to go to the mosque, as long as there is no fear of 'fitna' (temptation/mischief). Therefore, they have linked the prohibition to individuals from whom fitna is feared or upon whom fitna is feared. Here, the change in the condition of people will not be a reason for changing the ruling. This is the school of thought (madhhab) of the Hanbalis (2) and others.

Ibn Qudamah says:
"Following the Sunnah of the Messenger of Allah (PBUH) is more reasonable. And the statement of Aisha (RA) applies only to those who have introduced something new, not to others. And there is no doubt that going out is disliked (makruh) for them" (3).

Ibn Hajar says:
"Allah, the Glorious and Exalted, knew what they would do later, yet He did not send revelation to His Prophet to prevent them. If their newly introduced matters made it essential to prevent them from the mosque, then preventing them from other places outside the mosque, such as markets, would have been even more logical. Moreover, this novelty has emerged from some women, not from all. If a prohibition is inevitable, it should only be for those who introduced it. And it is better to look towards matters where there is a fear of 'fasad' (corruption) or harm, and then avoid it. For the Prophet (PBUH) alluded to that by prohibiting the use of perfume and adornment and by imposing restrictions on going out at night" (4).

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(1) According to the Maliki school: Young women shall be prevented from going out for Eid and

Istisqa (prayer for rain) prayers, but shall not be prevented for the mosque. According to the Shafi'i school: It is disliked (makruh) for young women or those who arouse desire to attend the mosque, and it is also disliked for the husband to allow her the opportunity. According to the Hanafi school: They shall be generally prevented. See: Hashiyah Ibn Abidin 2/232, Fath al-Qadir—Ibn al-Humam 1/365, al-Bayan wa at-Tahsil 1/421, at-Tawdih fi Sharh Mukhtasar Ibn al-Hajib 1/476, al-Majmu Sharh al-Muhadhdhab 4/198-199, Asna al-Matalib 1/210.

(2) See: al-Mughni 2/278-279, Sharh Muntaha al-Iradat 1/267.

(3) al-Mughni 2/271.

(4) Fath al-Bari 2/349; additionally, for Ibn Hazm's detailed discussion on not presenting evidence using the Hadith of Aisha (RA), see: al-Muhalla 2/172-174 and 3/115-116.

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Judicial rulings change in proportion to the extent to which people's sinfulness and transgression increase.

This is a well-known saying attributed to the Rightly Guided Caliph Umar bin Abd al-Aziz (may Allah have mercy on him). It is not merely a common application in the political sphere, but rather a very important principle of political thought, which is frequently relied upon. Although this statement is famously associated with Umar (RA), it is not found as a narrated chain (Musnad) attributed to him. Furthermore, the saying has been attributed to many others as well.

A similar account is found from Shuraih (RH). It is narrated from Bukhari that he came to Shuraih

and asked: "What is the reason for this novelty (new ruling) in judicial proceedings?" He replied: "When people introduce new matters (crimes), novelty also arises in judicial proceedings."

Narrated from Ibn Sirin (RH), he said: "Who first demanded testimony?" They said: "Shuraih." He said: "You have created new matters, so he also introduced new methods (in judgment)."

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(1) The mention of this saying and reliance upon it is widely prevalent in the books of the jurists. Ibn Abi Zayd al-Qayrawani's 'Al-Nawadir wa al-Ziyadat' (8/237) is one of the oldest sources to mention it; he narrated it from Sahnun where it was not attributed to Umar. Ibn Farhun, in 'Tabsirat al-Hukkam' (2/153), narrated it from Ibn Wahb, mentioning regarding Sahnun that Ibn Asim al-Muhtasib used to make people swear an oath of divorce. When asked where he obtained this from, he replied: It is narrated from Umar bin Abd al-Aziz that: (Judicial decisions occur in proportion to the degree of people's transgressions). However, Qadi Iyad, in 'Tartib al-Madarik' (4/122), mentioned this and attributed the saying to Imam Malik. Thereafter, scholars have mentioned it consecutively; see: Al-Qayrawani's 'Ar-Risala' (131-132); Al-Kanaji's 'Tafsir al-Muwatta' (2/504); 'Al-Muntaqa Sharh al-Muwatta' (6/140); 'Al-Muqaddimat al-Mumahhidat' (2/309).

(2) See: 'Al-Nawadir wa al-Ziyadat' (8/203); Ibn Battal's 'Sharh Sahih al-Bukhari' (8/232); 'Al-Jami li-Ahkam al-Qur'an' (16/181); 'At-Turuq al-Hukmiyyah' (2/556). It is possible that Imam Malik narrated it from someone else, which is why it was narrated from Ibn Shihab that he used to say: It was said that judicial decisions occur in proportion to people's sins. See: 'Al-Muntaqa Sharh al-Muwatta' (6/46). And Al-Dardir mentioned that the saying is attributed to Umar and Imam Malik regarded it as excellent; see: 'Ash-Sharh al-Kabir' (4/174). The saying is also attributed to Rabi'ah ar-Ra'i in these words: (Judicial decisions occur in proportion to situations created by people). See: Ibn Farhun's 'Tabsirat al-Hukkam' (2/209).

(3) Ibn Sa'd narrated it in his work 'At-Tabaqat al-Kubra' (6/133).

(4) Ibn Abi Shaybah narrated it in his 'Al-Musannaf' (7/271).

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Regardless, the saying is considered correct in all circumstances and its mention is widely famous in the books of the jurists, especially among the Maliki jurists. The jurists have based several legal reasonings (Ijtihad) concerning public interest (Maslahah) upon it, which include:

1- What has been narrated from Sahnun: (He would not accept a representative from the defendant's side, except for a sick person, or such a woman...)

...except for women whose peers do not usually go out, or a person on a journey, or someone who has a clear and acceptable excuse. He used to accept a representative on behalf of the plaintiff. He would say: New judicial rulings or regulations are formulated for people in response to the new situations they create (1).

When he was asked about the public interest (*maslahah*) behind this regulation, he said: (I have introduced this rule only for these arrogant and powerful people, so that they do not find the opportunity to stay away from appearing before the people. As the rate of people's vice and immorality increases, judicial decisions for them will also be introduced proportionately. However, women, sick persons, and honorable individuals may appoint representatives) (2).

2- A person who seizes and withholds people's property and claims that the property has been lost shall be imprisoned and repeatedly lashed until he repays it (3).

3- Regarding the legality of increasing the degree of *Ta'zir* (discretionary punishment) in light of

the increasing prevalence of crimes (4).

4- The legality of making an oath contingent upon divorce (5).

5- There is no rule for taking an oath between two litigants without the condition of mutual transaction or involvement (*khultah*) (6).

6- Making a witness take an oath if suspicion arises (7).

(1) Al-Nawadir wa al-Ziyadat 8/131.

(2) Al-Nawadir wa al-Ziyadat 8/237.

(3) See: Al-Muqaddimat al-Mumahhidat 2/307-308.

(4) See: Al-Dhakhira 12/121-122; and see: Al-Furuq 4/179.

(5) See: Tabsirat al-Hukkam 2/153; At-Taj wal-Iklil 8/269.

(6) See: Ar-Risala, Al-Qayrawani 131; Tafsir al-Muwatta lil-Qanazi' 2/5003. This is the view of the Maliki school, which is contrary to the opinion of the majority (*jumhur*) of jurists.

(7) See: Tabsirat al-Hukkam 2/149; Ash-Sharh al-Kabir, Ad-Dardir 4/174; Fath al-Aliyyil Malik 2/307.

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7- Adopting the strictest among the opinions of the scholars in consideration of public interest. (1)

8- Based on this principle, prevailing customs regarding mutual meetings and respect among people are considered, especially concerning elders—customs that were not known before. Explaining this matter in detail, Al-Qarafı says: (This matter involves showing respect by standing upon the arrival of distinguished persons in our age, and if someone's status is very high, bowing the head slightly to them, addressing them with titles such as 'Jamaluddin', 'Nuruddin', 'Izzuddin', etc., and using such qualitative titles while avoiding their name or patronymic (*kuniyat*)).

After mentioning several such matters, he said:

(One day, I was in the presence of Sheikh Izz al-Din bin Abdus Salam. He was one of the foremost scholars and was extremely firm and sincere in matters of faith, dedicated to the well-being of all Muslims, both common and elite. He remained steadfast upon the Book and the Sunnah and did not concern himself with kings or anyone else. In the pursuit of Allah's pleasure, he did not heed the blame of any critic. A fatwa was presented to him which asked: What do the Imams of the faith—may Allah grant them success—say regarding the practice of 'standing to show respect,' an innovation of people in the current age? Although it was not prevalent in the era of the Salaf, would it be permissible or prohibited and forbidden?)

In response to the fatwa, he wrote: The Messenger of Allah (peace be upon him) said: (Do not harbor malice toward one another, do not envy one another, do not speak behind each other's backs, and do not sever ties. Rather, O servants of Allah, become brothers.) In current times, abstaining from standing to show respect leads to the breaking of mutual relations and aversion. Therefore, if someone considers it necessary (wajib), it would not be far from the truth.

This is the original statement written by him, without any addition or subtraction. After he wrote it, I read it and found it to be exactly so. This is essentially the essence of the saying by Umar bin Abdul Aziz: "New judicial rulings are formulated for people in accordance with the degree of wickedness they innovate."(2)

From the aforementioned branches, the scope of application of the said statement can be understood. This is a public interest-oriented ijtihad (legal reasoning) that considers new situations that did not exist in the past. Therefore, in its implementation, ijtihad will be conducted

in such a way that...

(1) See: Matali'ut Tamam 138; Ash-Shamma has criticized this statement, as it has no fundamental basis in Sharia, nor is any proponent of it known. He then mentioned that it is possible to apply it to a correct meaning of this nature.

(2) Al-Furuq 4/251.

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...being contrary to Sharia; as Al-Qarafı stated, the objective is—to create causes that the provisions of Sharia did not previously demand because those causes did not exist. This does not mean it is a new Sharia. Here, the matter is the same. According to this principle, this paragraph will be applicable, provided that it does not make anything forbidden (haram) permissible and does not abandon anything obligatory (wajib).

Therefore, this statement takes into account changeable matters. If certain rulings were not necessary to apply in the early era due to the presence of trustworthiness and good character, then when the opposite situation arises, those rulings change to deter the followers of falsehood from their erroneous acts.

This relates to legitimate judicial proceedings that take the circumstances into consideration. Consequently, it thwarts oppression against the victim and blocks, through lawful means, the paths of any stratagems used by a litigant following falsehood.

When this is established, this principle is then linked to a public interest (maslahah) that is not contrary to Sharia and is associated with an ijtihad that does not conflict with its provisions. Therefore, ijtihad will be carried out to suppress wickedness without contradicting the Quran and Sunnah. (It is not that new judicial rulings based on personal whims will be invented for them that are outside the Quran and Sunnah).

Ibn Hazm rejected this statement and took a stern stance regarding the rejection, saying: "**This is an invention of those without religion. If Umar had said this, he would have become an apostate from Islam. However, Allah Almighty protected him from that and kept him free of it. For no one considers it permissible to change the rulings of religion except an infidel.**"

He argued in support of this that the concept of innovating something new (in religion) is only possible when an obligatory duty (fard) such as prayer or zakat is abolished, or if something is added to these obligations, or if a new obligation is introduced, or if something permissible (halal) is made forbidden (haram).

(1) Al-Furuq 4/251.

(2) See: Al-I'tisam 1/477.

(3) See: Ibn Nazir's explanation of Ar-Risalah 2/351, Mayara's explanation of Tuhfat al-Hukkam 1/96, Az-Zurqani's explanation of Muwatta 1/676.

(4) Masail Ibn Rushd 1/682.

(5) Al-Ihkam fi Usul al-Ahkam 6/109.

(6) See: Al-Ihkam fi Usul al-Ahkam 6/110.

The truth is that the matter is far removed from the aforementioned statement, and it is impossible for such a thought to have occurred to any of the jurists who considered following it acceptable. This is because it is merely an extension of an obligation, from which the perspectives

of the jurists are spontaneously known to be miles apart. Therefore, inventing the intended new thing does not validate opposing any Sharia ruling; rather, it relates to an acceptable field of ijtihad (independent legal reasoning) that some people might consider contrary to Sharia because it did not exist before, even though it is essentially an ijtihad based on public interest (maslahah) that is capable of upholding the proofs of Sharia.

In fact, we encounter two incorrect approaches when considering this statement:
The first approach: Those who reject it because it leads to the necessity of making the forbidden permissible and abolishing obligatory duties.
The second approach: Those who rely on it to validate opinions contrary to Sharia and to establish unacceptable public interests.

- Refraining from interfering with the infrastructure of the Kaaba:

One of the famous incidents is the Abbasid Caliph Harun al-Rashid seeking advice from Imam Malik regarding the reconstruction of the Kaaba's infrastructure on the foundations of Ibrahim (A.S.). The reason was that during the pre-Islamic era of ignorance (Jahiliyyah), some parts were excluded from the original foundation during the construction of the Kaaba. The Prophet (peace and blessings of Allah be upon him) wanted to rebuild it and had informed Aisha (may Allah be pleased with her) of his desire in this regard. However, he refrained from doing so for fear of creating a negative reaction in the people's minds. Later, when Ibn al-Zubayr (may Allah be pleased with him) came, he rebuilt the Kaaba exactly as the Prophet (peace and blessings of Allah be upon him) had wanted. Subsequently, Abd al-Malik ibn Marwan demolished it and restored it to the state the Kaaba was in during the time of the Prophet (peace and blessings of Allah be upon him).

Then, during the era of Harun al-Rashid: (Harun al-Rashid mentioned to Imam Malik ibn Anas that he wished to demolish the part of the Kaaba built by Hajjaj and restore it to the structure built by Ibn Zubayr. At that time, the Imam said to him: O Commander of the Faithful! I adjure you by Allah, do not make this House a plaything for kings; whenever one of them wishes, they will demolish and rebuild it, and as a result, the solemnity and dignity of the House will vanish from the hearts of the people.) (1)

(1) Sharh Sahih al-Bukhari, Ibn Battal 4/264; At-Tamheed, Ibn Abdil-Barr 10/49-50. Some historians have mentioned that the incident occurred with Al-Mahdi ibn al-Mansur; see: Al-Bidayah wan-Nihayah 11/693.

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This is a noble Shari'ah principle toward which this Imam was guided. It is an answer full of intelligence and wisdom, in which he focused on the public interest (maslahah ammah) to preserve the people's religion and the sanctity of Allah's symbols. He did not merely look at partial research regarding building regulations. The reason is that the fundamental basis of this issue allows for both views. Leaving the construction as it is means maintaining it in the state it was during the era of the Holy Prophet (PBUH), which the Messenger of Allah (PBUH) himself maintained, was satisfied with, and did not change. On the other hand, rebuilding it would mean implementing what the Messenger of Allah (PBUH) had desired, preferred, and wished to exist. Thus, both views are close. Therefore, the Imam did not look at which of these partial matters was preferable or correct in his view; rather, he looked at a far more reaching issue, which is the protection of the sanctity of the Kaaba and closing the door to the chaos that could have opened if the trend of changing the Kaaba's shape continued. This matter was far more important and dignified to him than acting upon what he personally deemed correct in this specific issue.

For this reason, people have considered Imam Malik's step highly commendable, and a consensus

among Muslims has been established upon it. (1)

- Declaring a woman permanently forbidden (haram) to the person with whom she eloped:

Among the specific historical events (nawazil) that occurred in the Maghreb countries (Morocco and adjacent regions) is this—when someone would propose to a woman and be rejected by her family, he would gather a group of people, attack the woman, and flee with her from her family until her guardian was forced to marry her to him. (2)

In the jurisprudence of nawazil of the Maliki school, this issue is called 'Al-Mukhalliq wal-Harib' (the enticer and the fugitive). 'Mukhalliq' refers to a person who incites a woman against her husband, instigating her toward separation and disobedience so that the husband divorces her and he can then marry her. Since the ninth century AH, the ruling of permanent prohibition (making marriage forbidden) has been in effect in such cases in the city of Fez, Morocco. The 'Harib' (fugitive) aspect is even broader; because after enticing her, he may flee with her, or the woman might not even be married. (3)

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(1) See: Al-Mufhim lima Ashkala min Talkhis Muslim 3/439, Al-Fatawa al-Fiqhiyyah al-Kubra 1/137.

(2) See: An-Nawazil, Al-Alami 1/101.

(3) See: Al-Fatawa wal-Qada' bima Jara bihi al-'Amal fi Turath al-Malikiyyah fil-Maghrib al-Aqsa, Tawfiq

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Al-Badri 34-35; Majallatu Afaqit Thaqafa wat Turath, Issue 101, 1439 Hijri.

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According to the well-known (Mashhur) opinion of the Maliki school (Madhhab), the marriage of a *mukhabbib* (one who instigates a wife against her husband) and a *harib* (one who elopes with a woman) is not permanently prohibited. However, a group of scholars from the post-Fez era issued a fatwa of permanent prohibition (Haram) in this regard (1).

Maliki jurists (Fuqaha) have treated the matter of a *mukhabbib* inciting a woman against her husband with great importance (2). However, later, as complaints regarding *harib* or elopers increased, it created complications. Quite a few Maliki jurists issued fatwas of permanent prohibition for such marriages and these individuals. The Maliki jurist Ibn Abdun wrote an extensive response on this subject, where he concluded: "It is essential for us to uproot the cause of corruption (mischief) and close every path that leads towards sin. Blocking the means to harm (Sadd al-Dhara'i) is one of the fundamental principles of Imam Malik's (RA) school. Therefore, we should strive to the best of our ability to close the path of such shameful acts as men eloping with women. For this reason, the previous reformist scholars of this region adopted the fatwa of permanent prohibition between women who elope and the men who flee with them, in order to obstruct the path of corruption and the perpetrators of corruption, even if it contradicts the well-known opinion" (3).

Ibn Abdun noted that his fatwa is contrary to the well-known opinion of Imam Malik's Madhhab. However, he decided that if the precedence of an opinion is clear based on evidence, then the less-known opinion may be acted upon. He further mentions that this was the view of Ahmad bin Maysar, which was followed by Ibn Arafah and his student Abu Abdullah al-Ubbi, and was prevalent in the city of Fez. This was also the fatwa of al-Wansharisi and others. He cited several such fatwas from his predecessors and contemporaries.

He based this ruling on several factors:

1. Closing the means that lead toward obscenity (Sadd al-Dhara'i) and penalizing a person with the opposite of their ill intention (so they cannot achieve their malicious goal); and this is one of the key principles of the Maliki school.

(1) See: Minahul Jalil 3/264.

(2) See: Al-Ubbi's Ikmalu Ikmalil Muallim 9/262, Ajwibatul Hawwari 268-270.

(3) From the fatwa of Abul Abbas Ahmad bin al-Faqih al-Hasan bin Abdun. See: Al-Nawazil, Lil Ilmi 1/91.

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2. And this is included within **Siyasah Shar'iyyah** (Sharia-compliant policy), which falls under this statement of Umar ibn Abd al-Aziz: "Judicial rulings shall be established for people in proportion to the magnitude of the sins they invent." (1)

As evidence for this fatwa, the punishment prescribed by Umar (RA) for a person who marries a woman during her **iddah** (waiting period) can be presented. It is that if he has intercourse with her, they can never be united in marriage (2); because this is a form of punishment to deter people from evil deeds. Therefore, "marriage to that woman has been made permanently forbidden for the person who marries during the iddah; so that through this, they can be deterred from the evil they committed, which is marriage during the iddah period." (3)

Based on the literal meaning, some jurists (fuqaha) have declared marriage to a woman during her iddah as permanently forbidden for such a person. (4) Although the context here might be

different, the same public interest (maslahah) exists in both cases, which is to permanently prohibit the marriage with the aim of closing the door to corruption or harm (**Sadd al-Dhara'i**).

As you can see, the Malikis have applied the principle of 'Sadd al-Dhara'i' in the case of marriage to a woman during her iddah, but they have not applied it in the cases of 'Muhallaq' and 'Harib' (the fugitive). The reason for this is likely that the matter of permanent prohibition regarding the marriage of the woman has been strengthened through the words and actions of Umar (RA). (5)

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(1) See: An-Nawazil, Al-Alami 1/91-107; and among those who relied on them in Ibn Abdun, see: Izahul Masalik, Al-Wansharisi 1/320.

(2) Malik has described this in the book Al-Muwatta 3/768.

(3) Jami'ul Masa'il 1/321; and see: Al-Qabas fi Sharh Muwatta Malik ibn Anas 3/66.

(4) The majority (jumhur) of jurists of the Hanafi, Shafi'i, and Hanbali schools of thought held the view that marriage among them would not be permanently forbidden. However, the Malikis moved towards marriage being permanently forbidden, which is an old view of Imam Shafi'i and a narration of the Hanbali school of thought. See: At-Tajrid, Al-Quduri 10/5327; Al-Istidhkar 5/473; Al-Fawakih ad-Dawani 2/12; Al-Muhadhdhab, Ash-Shirazi 3/133; Bahrul Madhhab 11/353; Al-Mughni 8/125; Sharhu Muntahal Iradat 3/201.

(5) Ibn al-Arabi says: (The majority of noble scholars have said: It is not permanent; while Malik (RA)'s statement is more firm and closer to the correct path. Because he followed the judgment of Umar ibn al-Khattab (RA). And Umar (RA)'s judgment is supported by proof. Because, a person who chooses the path of sin to do a deed before its time is punished by being deprived of it. For example, when an heir kills his testator (the one from whom he would receive property). And this is such a clear matter that there is no ambiguity in it.) Al-Qabas 3/66.

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Refusal to travel with the husband:

If a husband wants to take his wife with him on a journey, does the wife have the right to refuse? The fundamental principle of jurisprudence (Fiqh) is that it is obligatory for a wife to reside where her husband resides. Therefore, if the husband wants to take her on a journey, it is mandatory for the wife to comply. According to most scholars, the wife's refusal of this is considered forbidden and categorized as 'Nushuz' (disobedience) (1).

According to the Hanafi school of thought, if the husband has paid the dower (Mahr) to the wife, she has no grounds for refusal. If the dower has not been paid, then according to Imam Abu Hanifa (RA), she has the right to refuse before the consummation of the marriage, but not after. However, according to the 'Sahibayn' (Imam Abu Yusuf and Imam Muhammad), the wife does not have this right at all (2).

However, some Hanafi jurists have expressed the opinion that this is not mandatory for the wife. The reason for this is the changing times and prevailing social disturbances, and the increased risk of oppression against the wife when she moves far away from her parental home:

(Abu Qasim al-Saffar said: This pertained to their era. But in our era, a husband does not have the right to take his wife on a journey, even if he has fully paid the dower. This is because, in their time, most people were pious and virtuous, but the people of our era have become corrupted. As long as a wife remains among her relatives, the husband cannot oppress her. But when he takes her to another city, he oppresses her, and the wife cannot seek help from anyone) (3).

Therefore, this is an Ijtihad (independent legal reasoning) based on public interest (Maslahah), which considers the protection of women's rights and the removal of oppression from them. The primary ruling is that a wife is obliged to obey her husband regarding his place of residence. However, in light of changing times, the prevalence of trials and tribulations (Fitna), and the increased risk of oppression against women, if there is a fear of such harm, it has not been made mandatory. This is an acceptable Ijtihad categorized under 'Siyasah Shar'iyyah' (Sharia Politics). Calling this Ijtihad acceptable does not mean that it is considered the final absolute decision or prioritized over other opinions; rather, this method of Ijtihad allows for valid differences of opinion.

(1) See: Al-Mughni 8/236.

(2) See: Al-Fatawa al-Hindiyyah 1/545, Al-Muhit al-Burhani 3/526.

(3) Sharh Adab al-Qadi, written by Al-Sadr al-Shahid 4/151-152, and also see: Al-Fatawa al-Walwalijiyyah 1/333, Adab al-Qada, written by As-Suruji 224.

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- Providing a portion of an orphan's wealth for the preservation of the remainder:

This occurs in cases where the orphan's guardian (Wasi) finds no alternative but to give some of the orphan's property to an oppressor—who has demanded said property—in order to save the orphan's remaining assets. If there is no other way to escape except through this method, then it is

permissible for the guardian to do so. This falls under reliable ijtihad (legal reasoning), as he is spending a portion of the property for the sake of preserving the remainder. Therefore, it is a corrective act, not a harmful one. And Allah is well aware of the difference between the one who causes mischief and the one who rectifies.

As-Sadr Ash-Shaheed says:

(An example of this is: when a ruler covets the orphan's property, and the guardian reaches a settlement with the ruler by giving a portion of the orphan's property to repel that oppression, the matter should be viewed as follows: if it were possible to repel the oppression without giving anything, then it is not permissible for the guardian to give anything; and if he does give, he must bear the compensation himself. But if it is not possible in any other way except through this method, then it is permissible and, based on what we have said, he will not be held liable for it.) (1)

Ibn Taymiyyah says:

(A person who aids in sin and transgression is one who assists an oppressor in his oppression. On the other hand, a person who helps the oppressed to reduce the oppression against them or to pay off a debt will not be considered a representative of the oppressor, but rather a representative of the oppressed. His status is similar to someone who lends to the oppressed, or takes the responsibility of carrying the property of the oppressed to deliver it to the oppressor. An example of this is the guardian of an orphan's or Waqf property; when an oppressor demands property from him and, after putting in his best efforts, he manages to repel the oppression from that oppressor or someone else by giving a smaller amount than the demanded property, he is a righteous person. And there is no ground for blame against the righteous.) (2)

Evidence for this can be presented from the story of Khidr (peace be upon him) mentioned in the Quran and the incident of making a hole in the boat of the poor people. (3)

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(1) Sharh Adab al-Qadi 3/393; see also on the same subject: Sinwan al-Qada wa Unwan al-Ifta

4/236-238, Adab al-Qada, As-Saruqi 503.

(2) Al-Siyasah al-Shar'iyyah 67.

(3) See: Sinwan al-Qada wa Unwan al-Ifta 4/237, Mughni al-Muhtaj 3/152.

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Based on this, it is permissible for him to damage some of the orphan's property if there is a possibility of saving the remaining assets. As is known, if he makes a hole in the boat, the usurper will turn away from it. (1)

Similarly, it will be permissible for him to give it if he is threatened with death or something that could cause the loss of a limb. This will be considered an acceptable excuse for the Wasi (guardian) to spend the orphan's property, and he will not be held liable for it. However, if he is threatened with beating or imprisonment, then this coercion (to provide the property) will not be sufficient. (2) However, this is a different legal issue, because it involves the Wasi's trustworthiness and...

It is associated with negligence and does not pertain to the principle of safeguarding the minor's property.

The subject under consideration here is not that a ruler or someone else has come and forcibly seized an orphan's wealth; in that case, he would be deemed helpless, the ruling is clear, and there is no liability on him. Rather, the focus here is on the guardian himself voluntarily giving up a portion of the orphan's property out of fear that all of it might be lost, ensuring it does not become

a means for the entire property to be seized. Consequently, he safeguards the remainder through a part of the property. (3)

This falls under the category of considering what is most beneficial for the orphan. Thus, it is permissible to enter into a settlement on his behalf when he is either a claimant or a defendant; meaning, paying some wealth if there is an apprehension that the claim for the full property will be upheld against him, or relinquishing some wealth if there is a fear that the entire property will be lost. (4)

This issue is not limited only to the fear of unjust encroachment on property, but also includes the concept of protecting wealth from total loss: (Do you not see that if an orphan's property is in a certain place and there is a fear of its destruction, people are hired for a fee to guard it, even if a significant part of the property is spent on it). (5)

(1) See: Al-Qawa'id al-Kubra 2/108.

(2) See: Sinwan al-Qada wa Unwan al-Ifta 4/237-238, Adab al-Qada, Suruji 152.

(3) See: Sinwan al-Qada wa Unwan al-Ifta 4/238, Adab al-Qada, Suruji 152.

(4) See: Tabsirat al-Hukkam 2/50.

(5) Mukhtasar al-Muzani 1/808.

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- Financial penalties in cases of inability to implement Shariah-prescribed punishments:

A well-known matter in jurisprudential issues is the regulation of financial Ta'zir or monetary fines, on which there is a difference of opinion among jurists. The majority of them (Jumhur) hold the view that it is prohibited, while some have considered it permissible (1). Those who advocate for its prohibition argue, in response to evidence concerning financial penalties, that they have been abrogated (mansukh) (2).

In the jurisprudential history of the Maliki school, a debate took place on this issue between the Maliki jurist al-Barzali (d. 841 AH), who deemed monetary fines permissible, and two Maliki jurists from Tunisia—Abu al-Qasim al-Zughbi (d. 833 AH) and Abu Abdullah ibn Marzuq (d. 824 AH)—in the presence of the Hafsid Sultan Abu Faris Abd al-Aziz. Later, al-Barzali penned a lengthy response on the matter (3).

This fatwa by al-Barzali created a significant stir among his contemporaries. The scholars of his time opposed him and deemed it contrary to the consensus (Ijma). Maliki jurists have consistently regarded it as an error and have refrained from following him in this regard (4).

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(1) The majority of jurists are of the opinion that financial penalties are prohibited, which is the reliable view in all four schools of thought. This is narrated from Imam Abu Yusuf and was the earlier view of Imam Shafi'i. However, a group of jurists have favored its permissibility; see: **Al-Bahr al-Ra'iq** 5/44, **Hashiyat Ibn Abidin** 4/61, **Al-Mughni** 9/178, **Kashshaf al-Qina'** 6/124, **Hashiyat ad-Dosuqi ala Sharh al-Kabir** 4/355, **Sharh Ibn Naji ala Risalat al-Qayrawani** p. 225, **Sharh an-Nawawi ala Sahih Muslim** 9/139, **Hashiyat al-Qalyubi** 4/206, **Majmu' al-Fatawa** 28/109, **At-Turuq al-Hukmiyah** 2/368, **Tabsira al-Hukkam** 2/293.

(2) **Sharh Ma'ani al-Athar** 3/145; rather, Ibn Rushd narrated a consensus on this matter, see: **Al-Bayan wa al-Tahsil** 16/278.

(3) See: Introduction by the researcher of the book **Matalit al-Tamam** p. 57; also see: **Matali al-Tamam, Lish-Shammi** p. 80.

(4) See: **Nawazil al-Ilmi** 3/158, **Fasl al-Maqal fi Jawab 'an Hadith al-Su'al wa Nafiyil 'Uqubah bil Mal**, Muhammad al-Adhami p. 16, **An-Nawazil al-Jadidah al-Kubra** 10/204 & 213.

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However, among the later jurists of the Maliki school, there were some individuals who prioritized Al-Barzali's opinion regarding the permissibility of financial punishment and took a stand in its favor. (1)

The banner of opposition to Al-Barzali in this regard was carried by his contemporary jurist Abu al-Abbas al-Shammi al-Hantati (d. 833 AH). He wrote a separate treatise to discuss Al-Barzali's fatwa, in which he refuted Al-Barzali's statements word for word. This was a unique scholarly treatise which he titled: 'Matali' al-Tamam wa Nasayih al-Anam, wa Manjat al-Khawass wal-Awam, fı Radd al-Qawl bi-Ibahati Igram al-Jabil bil-Jinayati wal-Ijram Ziyadatan 'ala ma Shar'ahullahu minal Hududi wal-Ahkam' (meaning: Refutation of the view favoring the permissibility of imposing additional financial fines on criminals beyond the Hudud and rulings prescribed by Allah; and a perfect source of guidance, advice for creation, and salvation for the elite and the commoners).

In this treatise, he established that receiving money as an addition to the Hudud, or providing financial penalties instead of the Hudud, or generally imposing financial punishment is prohibited. (2)

Al-Shammi based his treatise on the foundation that financial punishment is a form of oppression and is equivalent to unlawfully consuming people's property, which is forbidden. And the descriptions of punishments that have come in the Quran and Sunnah are sufficient; there is no need for anything beyond that. Therefore, opposing it by citing public interest or 'Maslahah' is a baseless claim to which no attention should be given; because the Legislator of the Sharia rejected these so-called interests of this nature. And the narrations that have come favoring the permissibility of financial punishment have been abrogated.

Al-Shammi did not limit himself only to this principled discussion; rather, he also discussed the matter of 'Maslahah' or public interest itself. Firstly, he denied the existence of any 'Maslahah' in

this regard. Because providing money as a punishment does not fulfill the purpose of suppressing mischief or disorder, nor can it prevent the urges of base desires. Rather, it is seen that one whose base desires have triumphed over him does not hesitate to spend money to achieve his goals and does not care about these things at all.

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(1) See: **Nawazil al-Alami** 3/153-154, **Ajwibat at-Tasuli** 153-161, **An-Nawazil al-Jadidah al-Kubra** 10/208 & 3

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227. For a review of the differences of opinion on this issue and the support or rejection by Maliki jurists, see: Introduction to Matali'ut Tamam, pp. 13-16 and 56-58; Al-Fatawa al-Fiqhiyyah fi Ahamm al-Qadaya by Al-Hasan al-Yubi, pp. 491-498.
(2) See: Matali'ut Tamam, p. 130, and see: p. 86.

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Secondly, he has proven the existence of harmful elements (*mafasada*) and demonstrated that it further increases harm. It turns penal laws (*hudud*) into commodities for buying and selling, opens the door to bribery, leads to the alteration of Shariah and the distortion of people's beliefs regarding it, and facilitates the path of disobedience. Consequently, the resulting harm is even more severe. Therefore, it cannot be categorized as "choosing the lesser of two evils."

Thirdly, he has determined that public interest (*maslaha*) remedies are not achieved through money; rather, the causes of these evils must be treated. These causes include the oppression of officials, their acceptance of bribes, and indifference towards Allah's laws (*hudud*). This demands

the establishment of justice, the rectification of affairs, and their total uprooting. The reason for dissatisfaction with the penal code (*hudud*) is not that they are implemented, but rather that they are bought and sold.

Similarly, he has refuted the arguments of inability and lack of capacity by stating that the *hadd* punishment will be enforced on those under authority (obedience), and it will not be possible to take money from those outside of it. (1)

It is necessary to mention here that the Malikis distinguish between "punishment within property" (*al-uqubat fil-mal*) and "punishment by means of property" (*al-uqubat bil-mal*). "Punishment within property" refers to limiting the offender's punishment only to the property through which or regarding which he was disobedient to Allah. On the other hand, "punishment by means of property" involves taking property from the offender that was not involved in his disobedience. (2) Therefore, in the Maliki school, the concept of "punishment within property" is established, but "punishment by means of property" is prohibited. (3)

Despite the fame of Al-Barzali's fatwa, I have not found it with anyone else except for the citations mentioned in various places in Ash-Shamma's book. The difference of opinion between Al-Barzali and Ash-Shamma can be summarized in two points:
Firstly: The provision of "punishment by means of property" for certain specific crimes, but not as an alternative to penal laws (*hudud*) and Shariah obligations (*wajibat*).

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(1) See the following sections of the book Matali'ut Tamam: 84-85, 92, 97, 100, 106, 109, 132, 138, 140, 142.
(2) See: Nawazil al-Alami, 3/159, detailed discussion in the answer to question no. 120.
(3) See: Matali'ut Tamam, p. 157; Nawazil al-Alami, 3/158, detailed discussion in the incident of question no. 17; and see: Al-I'tisam, 2/621-622; Minah al-Jalil, 4/533; An-Nawazil al-Jadidah al-Kubra, 10/220-222.

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Al-Shami follows the school of thought (madhhab) of the majority (Jamhur) of the honorable scholars (Ulama) in prohibiting financial penalties; this is a legal (Fiqhi) issue that depends on the consideration of its acceptability by the Lawgiver (Shari'ah). (1)

Secondly: Provisions for imposing financial fines as an alternative in cases of inability to administer physical punishment.

Later on, the discussion regarding this issue progressed in a way where subsequent Maliki jurists (Fuqaha) took a different path. This was more consistent with 'Siyasah Shari'ah' (Shari'ah-compliant policy) than the original ruling on financial penalties. This involves the provision for imposing financial fines when there is an inability to implement the physical fixed punishment (Hadd) due to the absence of a Sultan or ruler capable of executing it. The countries of the Maghreb (North Africa) region faced this problem.

Jurist Musa al-Waryani, in a detailed response, mentioned the events involving Al-Barzali and his contemporaries and concluded his answer with these words: "His fatwa regarding the validity of financial penalties when physical punishment is impossible is well-established; therefore, hold onto it firmly." (2)

Jurist Muhammad ibn al-Arabi al-Fasi (d. 1052 AH) was asked—about tribes where chaos and banditry have spread due to the absence of a ruler—if they could be deterred through financial penalties, would that be acceptable for the sake of necessity? For, in the absence of a ruler at that

time, it was not possible to suppress them in any other way, and attempting to take any other action would have resulted in even more heinous and worse situations. (3)

Al-Arabi al-Fasi responded by describing the fundamental principle regarding the prohibition of financial penalties and mentioned what occurred between Al-Barzali and Al-Shami. He further noted that jurists had rejected Al-Barzali's view. He then stated: "However, both the statement of Al-Barzali and the statements of those who protested against him are based on the presence of an Imam or ruler and his ability to establish Shari'ah-mandated Hadd and manage Shari'ah provisions according to their original course. And there is no doubt about it, to deviate from that..."

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(1) To see the evidence of the proponents of the validity of financial penalties, see: Majmu' al-Fatawa 28/109-112, Al-Turuq al-Hukmiyyah 2/688-698.
(2) See: Nawazil al-Alami 3/162, and for his detailed answer, see: Al-Nawazil lil-Alami 3/152-163.
(3) See: The complete treatise (letter) of Al-Arabi al-Fasi: Al-Nawazil al-Jadidah al-Kubra 10/213-228.

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Changing Shari'ah punishments (Hadd) to something else despite having the opportunity to implement them is essentially a reversal of the original ruling and is synonymous with destroying the Hadd. Its ugliness or evil is so evident that there is no need for any description or evidence. As for the situation arising here, regarding which the question was asked, it relates to a time when there is no Imam (ruler) and the Hadd...

...it is not possible to establish and implement the provisions in their original manner. Consequently, the context of the issue they discussed is different from the context of the current issue in question. (1)

He then established the validity of this step to prevent the harm caused by abstaining from punishing these criminals and the massive corruption or disaster that results—which impacts the essential matters considered by Sharia. He presented evidence in support of this and then said:

"(The implication is that when it is impossible to implement the prescribed punishment (Hadd) and it exceeds one's capacity, yet there is a need to adopt some punitive measure to change the situation, and if there is sufficient capacity through which 'Ta'zir' (discretionary punishment) can be administered for governance purposes to deter the criminal, then in that case, the grounds for Hadd will be substituted by Ta'zir. Consequently, the known provisions of Ta'zir will be implemented. This does not mean that the Hadd is being abolished through this. Rather, this is the maximum limit of capability for that time as an effort to prevent corruption as much as possible and to change injustice according to one's ability.)" (2)

A question may arise here: how is it possible to seize property or impose fines, while it is not possible to implement physical punishment?

Al-Fasi did not leave this doubt unaddressed. He clarified the condition of those tribes and their detachment from the Sultanate (central government). He then said: **"(It is not possible to carry out physical punishment in their case. Because if anyone from among them wants to apply it to them, they do not acknowledge his authority. They consider it dishonorable to accept the authority of physical governance such as execution, mutilation, or beating over one another. They oppose it due to pre-Islamic pride. Specifically, they were not accustomed to seeing Hadd or Ta'zir implemented through Sharia methods even during the Sultan's reign. Their punishment consisted only of monetary fines or penalties. And whenever a murder or anything else occurred,**

they would regard it merely as oppression, as it did not follow any proper set of principles.)"

(1) An-Nawazil al-Jadidat al-Kubra 10/213 - 214.

(2) An-Nawazil al-Jadidat al-Kubra 10/215 - 216.

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Sharia [provisions]; consequently, having become accustomed to this, a greater aversion to its implementation has now developed among them. They imagine that since it was not implemented upon them during the Sultan's reign, it is only natural for it not to happen now. In such a situation, who would now hope for its implementation? As a result, the path to implementing those provisions has been blocked. (1)

Perhaps it was the fear of this type of strife or harm that Al-Barzali held. Some Maliki jurists have described what happened after Barzali's debate: **(The Amir acted according to his word and began implementing physical penal codes, disregarding Barzali's opinion. As a result, people started shouting and screaming, and panic and riots broke out. Then he returned to the opinion of Abul Fadl Al-Barzali again). (2)**

After this, Jurist Muhammad Mayyara (died 1072 AH) came and gave a decision similar to what Arabi Al-Fasi had mentioned. He said: **(However, the statements of Barzali and those who refuted him—Allah knows best—that...)**

This is fundamentally applicable in the presence of the Imam or the head of state and his ability to

implement criminal laws and govern Sharia rulings based on their original foundation. There is no doubt that avoiding this despite having the ability and turning towards something else is a distortion of the provisions and judging by other than what Allah has revealed, the perpetrator of which is characterized by injustice and transgression; and its vileness is not unknown to anyone. But in the absence of the Imam and when it is impossible to implement criminal laws and govern Sharia rulings on their original basis—Allah knows best—it is better [to adopt another system] than to leave the powerful to oppress the weak due to negligence and lack of governance. Because the harm or discord (Fitna) of that is so great that it is sufficient to see it with one's own eyes rather than expressing it in words. It leads towards the destruction of settlements and the ruin of order. Rather, if it is impossible to establish the criminal code and it goes beyond capability, yet the application of punishment is necessary for the reformation of society and if there is a level of applying 'Ta'zir' (discretionary punishment) through which governance is possible, then the reasons for criminal law will be substituted by 'Ta'zir'. As a result, the rules known as 'Ta'zir' will be implemented. This does not mean that through this, Sharia punishment will be abolished, but rather this will be the limit of capability at that time in order to remove the harm as much as possible. (3)

(1) An-Nawazil al-Jadidah al-Kubra 218/10, also see: Ajwibat al-Tasuli 107.
(2) Nawazil al-Islami 3/154.
(3) Fath al-Alim al-Khallaq Sharh Lamiyat al-Zukkak 434; At-Tawdi quoted this in the commentary of Lamiyat al-Zukkak 159-160.

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At-Tasuli (died 1268 AH) mentioned this matter and after describing various existing opinions, he presented a summary. In it, he said:

"(What appears from all this is: Allah the Almighty has determined specific 'Hudud' or criminal

codes for certain matters, such as—adultery, theft, Hirabah (robbery), slander, and similar crimes. In these cases, it is not permissible by consensus to provide financial penalties. Because it involves changing the criminal code determined by the Great Lawgiver. Allah the Almighty says: {And whoever does not judge by what Allah has revealed—then it is those who are the disbelievers} [Surah Al-Ma'idah: 44]. However, if it becomes impossible to implement that punishment, only then will punishment be provided through financial fines. This will be done to bear the lesser of two harms and to prevent the more evil of the two as much as possible. And if that inability or hindrance is removed, then the Hudud will not be abolished)" (1).

- Considering the best and successively closest alternative in the case of Sharia conditions and obligations:

And this is because it may not be possible to fully observe a specific Sharia requirement at a certain time or place. In such a situation, without ignoring this changing situation, one should not strictly cling to the magnitude of the original obligation. Conversely, the Sharia provision cannot be completely canceled due to this inability. Rather, efforts should be made to become closer by considering the matter of observing the provision according to the public interest (Maslahah) and through Ijtihad to the best of one's ability.

The areas where the issue of 'considering the best and successively closest alternative' is most clearly manifested are: providing testimony and the Sharia requirement of righteousness (Adalat) in administrative positions (Wilayat). Although the jurists (Fuqaha) agree on the necessity of this condition, they have observed that the implementation of this condition at any given time or place...

...might become difficult or impossible. For this reason, public-interest-oriented Ijtihad has introduced the principle of considering "the best and successively what is closest to it." Some of the aspects of adopting this principle are:

(1) Ajwabat al-Tasuli 161 - 162. At-Tasuli has mentioned some important detailed descriptions in the discussion of this context after this; see: 163 - 165.

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First: If upright (Adil) people are not found in a locality, then the work will be carried out by those who are relatively qualified or better according to their situation. The matter is similar for judges. (1) And if uprightness is difficult to find among rulers or judges, then the one among them with the least wickedness will be given the responsibility. (2)

Second: Included in this consideration of accepting the more qualified person in terms of uprightness is: maintaining the relativity of uprightness based on time and place. Because a person being upright at a specific time or place does not mean they will be considered upright at all times and in all places. As it is said: "For every nation, there are upright individuals (by their own standards)." (3)

Therefore, the standard of uprightness is not the same at all times and in all places. Rather, "focus is placed on those who are best and more qualified at that time, and taking their testimony is valid. Every era has its own conditions which must be considered. Thus, Ijtihad should be exercised on this matter by observing the conditions of contemporary times, and their testimony will be accepted according to the capacity of the time and era. Because only this much is within reach. For if we wish to strictly maintain the qualities of the upright from previous eras, then the judicial system and regulations will become defunct. Therefore, let whoever faces this issue and is capable of it, consider the matter." (4)

Imam Shatibi says: "Uprightness will be judged relative to the inhabitants of each era, although there may be differences in the manner of being endowed with this quality. We surely know that the uprightness of the Sahaba (Companions) is not equal to the uprightness of the Tabi'un (Successors). Again, the uprightness of the Tabi'un is not equal to the uprightness of the next generation. Similarly, every era up to our time follows the same pattern relative to the subsequent era... Therefore, it is necessary to consider the upright of each era according to the conditions of that era. Otherwise, it will not be possible to establish those authorities or positions for which uprightness is a prerequisite." (5)

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(1) See: Al-Dhakhira 10/46; Al-Turuq al-Hakimiyya 1/466; Tabsirat al-Hukkam 1/485, 487.

(2) See: Al-Qawa'id al-Kubra 2/80 and 1/122.

(3) See: Al-Mi'yar al-Mu'rab 10/146; Al-Dhakhira 10/46; Sharh Muntaha al-Iradat 3/599; Al-Marqaba al-Ulya fiman Yastahiqu al-Qada wal Fatwa, Abu Hasan al-Nubahi 98-99.

(4) Fatawa al-Barzuli 4/198.

(5) Al-Mi'yar al-Mu'rab 10/204; and see: Sharh Miyara ala Tuhfat al-Hukkam 1/55.

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Al-Qarafi says regarding the characteristics of justice (*'Adalat*): (For this reason, it varies with changes in location and era; consequently, the just individuals of our era would not have been deemed acceptable in the era of the noble Sahaba [Companions].)(1)

According to the school (*Madhab*) of the majority (*Jumhur*) of jurists (*Fuqaha*), the necessity of this *Ijtihad* becomes even more pronounced for those who maintain strictness in establishing the conditions for justice. In their view, a just person is one whose religious integrity is reliable and whose word is satisfactory. This status is attained by abstaining from any major sins (*Kabira*) or by not persisting in minor sins (*Saghira*).(2) This is because this is a matter that becomes rare or difficult to achieve in certain times or places.

However, this problem might be somewhat mitigated in light of another opinion. According to that view, *'Adalat* or justice is defined by a person's virtues outweighing their sins. The primary consideration is the predominance of their overall state—whether virtue or sin is more prevalent. Therefore, the person whose scale of virtue is heavier is considered just.

Imam Shafi'i says:

(There is no physical or verbal mark to distinguish between a just and an unjust person. Rather, the sign of their truthfulness is revealed through an examination of their personal conduct. Thus, when outward goodness is observed in most of their affairs, it will be accepted, even if there are shortcomings in some areas. This is because no one we have observed is entirely free from sin. When an individual mixes both sin and righteous deeds, there is no choice but to exercise *Ijtihad* to discern which of the two—good or bad—is more prevalent.)(3)

The question now is whether the concept of virtue prevailing over sin is contingent upon the avoidance of major sins. That is, is it possible to maintain this balance even after committing a major sin, or is this perspective concerned with...

(1) Al-Furuq, 4/65.

(2) See: Sharh Mukhtasar at-Tahawi, 8/124-125; Al-Bayan wat-Tahsil, 10/81; Rawdatut Talibin, 11/225; Kashshaf ul-Qina', 6/418-419.

(3) Ar-Risalah, 485-486; and see: Al-Umm, 8/310; Adabush Shafi'i wa Manaqibuhu lir-Razi, 344.

...along with avoiding major sins, in the context of committing minor sins; and through this, it reflects the opinion of the *Jumhur* or the majority.

...becomes closer (1).

However, some jurists have clearly explained this meaning in a way that suggests expanding the scope of 'Adalat' (justice/righteousness) based on the predominance of good deeds; in this case, the condition of unconditionally avoiding major sins or not persisting in minor sins has not been imposed. An example of this is:

When Qazi Shurayh was asked: "Who is a righteous (Adl) person?" He replied: "The person who sits in the gatherings of his community, participates in prayers with them, and about whose belly and private parts no stigma can be attached" (2).

Ibrahim al-Nakha'i said: "Among Muslims, that person is righteous as long as no slander is made regarding their belly and private parts" (3).

Narrated from Sha'bi, he said: "A Muslim person's testimony remains valid as long as they have not received any Hudud (prescribed punishment) or any deficiency or deviation in their religion is known" (4).

When Ibn al-Mubarak was asked about righteousness, he said: "One who possesses five characteristics: he prays in congregation, does not drink this beverage (alcohol), has no deficiency in his religion, does not lie, and has no issues with his judgment/intellect" (5).

(1) While conditioning the predominance of good deeds, jurists mention the condition of avoiding major sins, and it appears that this is the majority view. Some of them describe it without mentioning or denying the commission of major sins, thus their statement holds both possibilities. Again, some of them have explicitly stated that this principle remains valid despite committing major sins, but those who hold such a view are few in number. See on this subject: Sharh Mukhtasar al-Tahawi 8/125; Al-Faqih wal-Mutafaqqih 363; Al-Hidayah fi Sharh Bidayat al-Mubtadi 3/1108; Mahasin al-Shariah (Kaffal al-Shashi) 568; Al-Hawi al-Kabir 16/150; Sinwan al-Qada wa Unwan al-Ifta 2/127-128; Rawdat al-Quzat 1/234; Rawdat al-Talibin 11/225; Jami' al-Masail 8/101-102; Majmu' al-Fatawa 28/35; Adab al-Qada (Al-Saruhi) 309-310; Al-Bahr al-Muhit 6/148; Tabsirat al-Hukkam 1/259; Al-Insaf ma'ash-Sharh al-Kabir 29/341.

(2) See: Akhbar al-Quzat (Waki) 465.

(3) See: Musannaf Ibn Abi Shaybah 4/428.

(4) See: Musannaf Ibn Abi Shaybah 4/428.

(5) See: Al-Kifayah fi Ma'rifah Usul al-Riwayah (Khatib al-Baghdadi) 1/231.

Some among them have said: If someone stays connected with the congregation, performs the obligatory duties (fara'id), preserves trusts (amanah), and is known among the people for honesty and truthfulness in financial dealings, then they are righteous. (1)

Thirdly: One of the matters included in considering the best approach is to accept the decision that righteousness (Adalat) can be divisible. A person being righteous in one specific matter does not necessarily mean they will be righteous in all matters. Therefore, such leniency might be shown in the conditions of righteousness for trivial matters which is not done in major matters. A judge may rely on such a strong presumption for testimony in a trivial matter that they would not for other matters. Similarly...

Accepting the integrity of an ordinary person does not mean that the judge's strong presumption regarding the truthfulness of the testimony is equivalent to the integrity of individuals renowned for their knowledge and piety. (2)

Fourth: Another aspect of considering the best approach and a matter included in the divisibility of integrity is to observe the differences between various chapters or fields of integrity. The integrity of each matter is determined according to the nature of that matter. Therefore, the condition is that he must be free from such transgressions that harm guardianship (wilayat) and the specific action for which integrity is a condition. Thus, a witness must be upright enough to be safe from lying and forgery; however, it is not necessary for him to be upright in all matters. (3)

The primary basis of this perspective is that accepting testimony depends on a strong presumption of truth and its preponderance. This is not such a high rank or honorable position that they would be unworthy of it. (4)

Based on this, integrity or *adalah* is not made a condition in matters like guardianship of marriage. This is because affection, compassion, and the natural instincts of a guardian prevent him from neglecting the rights of those under his care. (5)

Notes:

(1) See: *Sinwan al-Qada wa Unwan al-Ifta* 2/132.

(2) See: *Adab al-Qada*, Ibn Abil Damm 1/383-384; *At-Turuq al-Hukmiyyah* 1/468-469; *Tabsira al-Hukkam* 2/10.

(3) See: *At-Turuq al-Hukmiyyah* 1/467-468; *Tabsira al-Hukkam* 9/2; *Ash-Sharh al-Mumti'*, Ibn Uthaymin 11/585-586.

(4) Ibn al-Wazir has provided a detailed answer in his book '*Ar-Rawd al-Basim*': 499-502.

(5) See: *Al-Qawa'id al-Kubra* 1/109.

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For this reason, some jurists have held the opinion that if a *fasiq* (transgressor) is influential and possesses a strong personality, then his testimony shall be acceptable. This is because, due to his influence and status, no one dares to bribe or induce him with money, and due to his personality, he does not resort to lying for selfish gain. Consequently, credibility is achieved through the testimony of such a person. Moreover, the primary objective of imposing the condition of integrity (*adalah*) is to be assured of his truthfulness, which is being realized here. (1)

Fifth: Considering the condition of the most qualified (*aslah*) in the matter of governance. One of the primary duties of a ruler is to select the most qualified person from among the existing individuals for various administrative positions of Muslims, according to time and place.

Regarding the responsibility of the leader (*imam*) in selecting administrative officials, Ibn Taymiyyah says:

“His responsibility is to appoint only the most qualified among the existing people. Sometimes, the most suitable person for the relevant post may not be found; in such cases, the relatively more qualified person must be selected for each post in turn. If, after full effort (*ijtihad*), he assigns the responsibility appropriately, then he has fulfilled the trust and performed his duty. In that case, he will be included among the righteous leaders before Allah, even if deviations occur in some matters due to others.” (2)

It must be emphasized here that considering this matter does not mean that the importance of rectifying the situation, if possible, will be ignored. This is because, “although it is permissible to appoint an incompetent person out of urgent necessity (if he is relatively [the best] among the existing...”

...is qualified), nonetheless, it is obligatory to strive for the improvement of the situation so that the necessary competence and perfection in administrative and leadership matters are achieved among the people." (3)

- Assuming responsibility under a tyrannical administration in an effort to reduce harm:

A legal issue (mas'ala) presented to Shaykh al-Islam Ibn Taymiyyah and described in his various writings concerns the ruling on assuming administrative positions where oppression and the illegal distribution of wealth exist.

(1) This is an opinion narrated from Imam Abu Yusuf and Imam Abu Hanifa, and others have stated it as well. See: Sinwan al-Qada 2/138, Fath al-Qadir, Ibn al-Humam 7/375, Adab al-Qada, Ibn Abil Dam 1/34-8, Ar-Rawdul Basim 503-504.
(2) As-Siyasah ash-Shar'iyyah, page 23.
(3) As-Siyasah ash-Shar'iyyah, pages 32-33.

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Resigning is forbidden for a person who wishes to reform, establish justice, and alleviate oppression. When the Shaykh was asked about this, he replied:

"If he strives to establish justice and eliminate oppression to the best of his ability, and if his governance is more beneficial and reformative for the Muslims than that of others, and his control over estates or landed property (iqta) is better than the control of others as previously

mentioned—then it is permissible for him to remain in power over the governance and estates, and there will be no sin upon him. Rather, if he is not engaged in a better deed by resigning, then remaining in his post is preferable. It may even become obligatory or mandatory for him to stay if no other capable person is available to perform it. This is because promoting justice as much as possible and removing oppression according to one's capacity is a communal obligation (fard al-kifayah); if no one else fulfills that responsibility, then every person must perform it according to their ability. In such a situation, he will not be held accountable for what he is unable to do regarding the removal of oppression." (1)

In another context, the Shaykh reaffirmed this point, stating that a reform-minded ruler or official might be unable to fulfill some rights or might unintentionally commit some forbidden acts; however, this should not prevent him from achieving greater public welfare. He said:

"If someone is responsible for general political authority or any of its branches, such as leadership, governance, judicial work, or similar positions; and it is not possible for him to fulfill all obligations and avoid all prohibitions, yet he intends to establish a level of justice that no other capable person would—then it is permissible for him to assume that responsibility, and it may even sometimes be obligatory. Because if governance involves such obligatory tasks through which public welfare is achieved—such as jihad against enemies, distribution of spoils of war (fay), implementing penal codes, and ensuring the safety of public roads—then fulfilling that responsibility is obligatory. In such a situation, if appointing someone unqualified for that responsibility, or accepting what is not permissible, or giving someone what should not be given becomes inevitable, and avoiding these is not possible for him—then the matter falls under the principle that 'an obligatory or recommended act that cannot be completed without it also becomes (conditionally) obligatory or recommended.' Therefore, it will be obligatory or recommended if the harm caused by it..."

... is less than the benefit of an obligatory (Wajib) or recommended (Mustahabb) act." (2)

(1) Majmu' al-Fatawa, 30/357; and for a detailed discussion on similar matters, see: Majmu' al-Fatawa, 29/35-33.
(2) Majmu' al-Fatawa, 20/55; the Shaykh has discussed this matter at length in this chapter; see: Majmu' al-Fatawa, 20/48-61.

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Here, the Shaykh has cautioned about the importance of maintaining a balance among Sharia rulings; otherwise, it may lead to abandoning obligations or committing forbidden acts:
(Otherwise, a person who does not balance the inherent Sharia benefits and Sharia harms in performing or refraining from an action may abandon many obligations and commit forbidden acts, mistakenly considering it to be piety. For example, someone might avoid Jihad against oppressive rulers and consider it piety; or abandon Friday and congregational prayers behind Imams associated with innovation (bid'ah) or sinfulness and consider it piety; or refrain from accepting truthful testimony or gaining knowledge from a scholar due to some hidden innovation present in them)(1).

When the Shaykh was asked about a certain person who is responsible for supervising Waqf (endowment) property and is diligent in protecting it, but is unable to withstand the pressure to spend it on those who are not entitled to it; in such a situation, can he relieve himself of this responsibility?

The Shaykh replied: **(When a conflict arises between benefit and harm, the Sharia dictates achieving the greater of two benefits by sacrificing the lesser one, and preventing the greater of two harms by choosing the lesser one. Therefore, if a major harm to this endowed property and its Sharia-approved spending categories can only be prevented in the mentioned way—that is, by tolerating a minor harm—then that will be Sharia-obligatory)(2).**

This matter might be unclear to some people, and they might wonder how such actions can be permissible when they appear to involve accepting oppression and cooperating in sin and injustice. Therefore, the Shaykh says to clear this ambiguity:

(An accomplice in sin and injustice is the person who helps an oppressor in his act of oppression. On the other hand, the person who helps the oppressed to alleviate the oppression against them, or helps them recover their dues, is a representative of the oppressed; he...)

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(1) Majmu' al-Fatawa 10/512. See also: For a detailed discussion on the balance between benefit and harm, see 'Al-Istiqamah' 2/211-220. Since the application of this balance carries the risk of being used as an excuse for laxity in some Sharia obligations and prohibitions, the Shaykh has provided a detailed explanation on this matter to resolve this complexity; see Majmu' al-Fatawa 14/469-478.
(2) Majmu' al-Fatawa 31/92.

The advocate of an oppressor is in the same category as one who lends him money or takes

responsibility for delivering money to him. An example of this is the guardian of an orphan or an endowment (waqf) property; when an oppressor demands money from him, if he tries his best to resist it—perhaps by giving him or someone else less than the demanded amount—then he is a Muhsin (doer of good), and there is no way (to bring an accusation) against those who do good.

Similarly, the owner's representatives—such as agents, scriveners, and others—who execute contracts, receive funds, and fulfill the responsibility of paying the demanded amounts to them; they shall not act as advocates for collecting money on behalf of oppressors.

Likewise, if any oppression (unjust tax or fine) is imposed upon the residents of a village, neighborhood, market, or city, and a righteous person from among them mediates to the best of their ability to resist it and distributes it fairly according to their capacity—without showing any partiality towards themselves or anyone else and without accepting any bribes—fulfilling the responsibility of resisting and paying it on their behalf, then he shall be considered a Muhsin. But generally, those who engage in this work become advocates for the oppressors; they show partiality, take bribes, protect whomever they wish, and collect money from whomever they wish (1).

The Sheikh concludes with a comprehensive juristic and advisory statement:

(Therefore, it is mandatory for a Muslim to strive in this matter according to his capacity. Whoever accepts a responsibility with the intention of obeying Allah, establishing the religion as much as possible, and protecting the interests of Muslims, and fulfills the obligations to the best of his ability while avoiding forbidden matters while in that role, then he will not be held accountable for what he is unable to do. For the appointment of the righteous is more beneficial for the Ummah than the appointment of the wicked. And he who is unable to establish the religion through state power and Jihad, if he acts according to his capacity—such as harboring goodwill in his heart, praying for the Ummah, loving goodness, and doing good deeds as much as possible—then he will not be held responsible for matters beyond his capability. For the foundation of the religion is the

guiding Book and the helping iron, as Allah Almighty has mentioned) (2).

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(1) As-Siyasa al-Shar’iyyah 67; and for similar discussion see: Jami’ul Masa’il 9/341-342.

(2) As-Siyasa al-Shar’iyyah 197; and regarding the state of one unable to establish Sharia, see: Majmu’ul Fatawa 19/219-227.

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- Obedience to the Imam in Voluntary or Recommended Acts:

Jurists have discussed the ruling: if the Imam (head of state) issues a command regarding a recommended (mustahab) matter, does it become mandatory to follow because obedience to him is obligatory?

Hanafi jurists have expressed a clear opinion regarding its obligatoriness. Al-Hamawi states: (The author—may Allah have mercy on him—cites our Imams in the book 'Sharhul Kanz' saying: Obedience to the Imam is obligatory in matters that are not sinful. Therefore, if the Imam commands to fast for one day, performing it becomes obligatory)(1).

The Malikis have expressed a similar view, but they have specified the obligatoriness for certain recommended matters like charity (sadaqah) instead of fasting. Thus, if the Imam commands them to give charity, it becomes obligatory(2).

The Shafi'is have discussed this issue more extensively and provided detailed explanations. They

differentiated based on whether the Imam's command is related to religious symbols (sha'air). They consider matters associated with these symbols to be more potent and mandatory.

Imam Zarkashi describes this difference of opinion, saying: (Will it be obligatory by the Imam's command? The matter is subject to observation: if it is part of public religious symbols, then it will be obligatory, such as if he commands them to perform ‘Istisqa’ (prayer for rain) during a drought, then it is obligatory to obey him. But if it is not part of public religious symbols, then it will not be obligatory, such as if he commands them to free a slave or give voluntary charity)(3).

One of the opinions of the Shafi'i school is not to differentiate between the two, and that the Imam's command in voluntary or recommended matters must be followed in all circumstances. Imam Nawawi says: (The Muhtasib will command them to perform the Eid prayer; now the question is: is this obligatory or recommended? There are two views on this.)

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(1) Ghamz 'Uyun al-Basa'ir 1/373, and see: Hashiyah Ibn Abidin 5/422.
(2) See: Hashiyah al-Adawi 'ala Sharh al-Kharashi 2/112.
(3) Al-Bahr al-Muhit 1/386.

I said: The correct view is that it is obligatory to follow the command, even if we say that the Eid prayer is Sunnah; because commanding a good deed means commanding obedience, especially when it is part of a public symbol. (1)

Imam Nawawi (may Allah have mercy on him) said: (If the command reaches someone who is capable of fasting, will fasting become obligatory for him? Answer: Yes! It will be obligatory. In this situation, the person who violates it will be a sinner. Because Allah Almighty has said: **"Obey Allah**

and obey the Messenger and those in authority among you" [Surah An-Nisa: 59]. And here, the command demands to be obligatory. Furthermore, there are authentic hadiths regarding obedience to those in authority.) (2)

They say: If he (the ruler) commands to fast for three days for Istisqa (prayer for rain), then the fast upon them...

...will become obligatory to observe. (3) and (The fast becomes obligatory in its own right, not for manifesting opposition to the ruler; because the ruler has no knowledge regarding the intention). (4)

Some Shafi'i scholars have held the view that neither Istisqa (prayer for rain) nor fasting becomes obligatory upon them. (5)

However, if we look towards the Hanbali Madhhab, we will see that the situation is different from the other three Madhhabs. Ibn Muflih says: (The apparent sense of their statement is: Fasting does not become obligatory by the ruler's command). (6)

Then he included the directive regarding a recommended (Mustahabb) matter within the general statement of the jurists concerning the obligation of obedience in matters that are not sinful. Following this, he clarifies its objective, saying: (Perhaps the objective is: politics, administration, and in Ijtihadi matters, generally, but not in all cases. For this reason, some of them have stated firmly: in terms of obedience, it will be obligatory; in the case of Sunnah acts, it will be Sunnah; and in the case of Makruh acts, it will be Makruh). (7)

(1) Rawdat al-Talibin 10/217.

(2) Fatawa al-Nawawi 63.

(3) See: Tuhfat al-Muhtaj 3/68, Nihayat al-Muhtaj 2/415, Asna al-Matalib 1/289.

(4) Al-Fatawa al-Fiqhiyyah al-Kubra 1/279; for the sub-branches of this issue according to the Shafi'is, see: Izhar al-Burhan fi al-Thana' 'ala al-Sultan, by 'Ilm al-Din al-Bulqini, included in the Rasayil al-Bulqiniyyah collection, volume two, pp. 502-505.

(5) See: Kifayat al-Nabih 4/517, Asna al-Matalib 1/289.

(6) Al-Furu' 3/227.

(7) Al-Furu' 3/227.

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Some Hanbali scholars have agreed with the opinion of the Jumhur (majority) or the plurality of scholars. They have stated: it is Wajib (obligatory). (1)

From this, we can take this summary that there are two streams of jurisprudential (Fiqhi) opinions:

First: Those who consider the observance of these recommended (Mustahabb) actions to be Wajib. This is the Madhhab of the Jumhur and some Hanbali scholars.

Second: Those who do not consider it Wajib. This is the well-known opinion of the Hanbali Madhhab and the view of some Shafi'i scholars.

The core foundation of this discussion is a well-established principle: obedience to the Imam is obligatory as long as he does not command a sin. Therefore, if he commands a sin, then by consensus (Ijma), he must not be obeyed (2). Similarly, if he commands any disliked (Makruh) action, even then he should not be obeyed; because it is not included under 'Ma'ruf' or beneficial deeds (3).

For this reason, the scope of obedience includes Wajib (obligatory), Mustahabb (recommended),

and Mubah (permissible) matters:

Al-Hattab al-Ru'ayni al-Maliki states: (By this, he referred to matters that are not evil or sinful acts. Consequently, this would include obligatory obedience, recommended (Mustahabb) acts, and Sharia-compliant permissible matters. Therefore, if a ruler commands a permissible matter, then obedience to him in that instance becomes obligatory, and opposing him is no longer permissible) (4). This is a well-established matter among the four schools of jurisprudence (5).

It is necessary to note here that the actions of the ruler are linked to public welfare (Maslahah) and are accountable to matters concerning general public interest. For those who have stated that recommended matters become obligatory (by the ruler's command), there are two possible meanings to their statement:

(1) He is Ibn Qayyil Jabal; see: Al-Insaf 2/454.
(2) For a description of the consensus (Ijma) or agreement regarding not obeying in sinful acts, see: Sharh al-Sunnah, Al-Muzani p. 86; Sharh Sahih al-Bukhari, Ibn Battal 8/216; At-Tamhid, Ibn Abdil Barr 23/277; Al-Ikna fı Masa'il al-Ijma 1/61; Majmu' al-Fatawa 28/58; Al-Insaf 2/454; Umdatul Qari 21/474.
(3) See: Hashiyat al-Shirwani 3/71; Mawahib al-Jalil 6/279; Sharh Mukhtasar Khalil 8/60.
(4) Mawahib al-Jalil 6/297.
(5) See: Bada'i' as-Sana'i' 7/99-100; Hashiyat Ibn Abidin 2/185 & 5/167; Al-Istidhkar 5/134; Al-Bayan wa at-Tahsil 3/63; At-Taj wal Iklil 8/91; Sharh Mukhtasar Khalil, Al-Kharashi 2/112; Rawdat al-Talibin 10/47; Asna al-Matalib 1/289; Tuhfat al-Muhtaj 3/71; Al-Mughni 9/165.

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The first possibility: This relates to specific voluntary (Nafal/Mandub) actions that involve public welfare. It is from this point that the difference of opinion regarding voluntary actions arose. Those who deemed these obligatory considered both the presence of public welfare and the necessity of obeying the ruler. Conversely, those who did not deem them obligatory believed that these are not potential areas for public welfare. Therefore, the core subject of discussion is those specific voluntary deeds that hold the potential for such public welfare—for example, those religious symbols (Sha'air) for which people gather, such as Istisqa (prayer for rain), Eid, and the accompanying acts of worship.

Therefore, the main scope of discussion is those voluntary actions that are suitable for public welfare. Based on this, it can be said that the Hanbali approach regarding these not being obligatory is more nuanced and consistent. This is because fasting and charity are purely acts of worship, which do not fall under the ruler's political governance or administrative management. In their case, what existed during the time of the Prophet (PBUH)—namely, encouraging people toward them and reminding them of their virtues—is sufficient. There is no logical claim for making these mandatory for people.

Furthermore, it is not correct to present evidence for this being obligatory based on the general meaning of the command to obey those in authority. For example, the words of Allah Almighty: **"Obey Allah, and obey the Messenger, and those in authority among you."** [Surah An-Nisa: 59]. This is because it amounts to presenting evidence using the very point of contention. The core of the discussion is whether this command of obedience includes this specific field or not. If it were already recognized as an instance of required obedience, there would be no disagreement. However, if it is argued that this was done based on general evidence regarding obedience and that it includes this field, then the answer would be what Ibn Muflih mentioned—that is, not

accepting it. Because obedience is related to specific matters; it is not general for everything.

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Therefore, independent evidence is required in its support. Thus, obedience is linked exclusively to righteous (*ma'ruf*) actions (1).

Regarding the religious observances for which people congregate, there may be an aspect that necessitates preservation. Specifically, if a ruler issues an instruction that serves the public interest, obedience to him becomes mandatory. Consequently, his directive to establish these observances constitutes a part of the general public welfare mandated by the religion. Thus, it is highly deserving of obedience. Therefore, the view that it is obligatory in such instances is well-reasoned. However, it must be ensured that this remains within the scope of *Fard al-Kifayah* (communal obligation) and does not become a *Fard al-Ayn* (individual obligation) for every person.

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(1) Regarding the limits of obedience in permissible matters and communal obligations (*Fard al-Kifayah*), see: *Rasa'il Abi 'Ali al-Yusi*, 1/220-221 and 224-226.

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Among the points noted by the jurists here is that if people become accustomed to delaying prayer until the end of its designated time, the ruler has the authority to command them to perform it promptly. This is to prevent people from forming a habit of delay and to ensure they do not mistakenly believe that the later time is the primary prayer time (1).

Similarly, if the ruler directs the performance of the Friday prayer at the beginning of its

permissible time frame (2), it is reasonable for this to be considered obligatory, as a clear public interest (*Maslahah*) is served.

An even more compelling case occurs when public interest is served through a *Mustahabb* (recommended) action. For instance, if an Imam or ruler appoints a specific individual to fulfill a *Fard al-Kifayah* (communal obligation); although the act is inherently recommended, it becomes obligatory for that specific individual once the Imam designates them (3).

The second possibility relates to all *Mustahabb* matters. In such cases, objections or complications would be more pronounced, and their inclusion under general directives of obedience would be even less likely. This is because the rulings for recommended acts are well-established in Sharia. Therefore, in matters where no general public interest is served, it does not stand to reason that an act becomes obligatory solely based on a ruler's command.

Rulings in the Absence of an Imam or Ruler:

Many Sharia rulings are linked to the presence of an Imam or ruler. Consequently, the management of public interest matters is tied to their leadership. However, such leadership may not always be available in every time and place. In circumstances where Muslims live in an environment without a specific ruler leading them, what course of action should they take?

Here, certain jurists have formulated a political-legal principle: in the absence of an Imam or ruler, the general Muslim community shall act as their successor (4).

Imam Khalil mentioned this in his famous work, 'Mukhtasar', stating: "(The wife of a missing person has the right to present her case to a judge (Qadi), a guardian (Wali), or a ruler, and the water supervisor; if these are unavailable, she shall present it to the Muslim community)." Many commentators have alluded to this principle...

(1) See: Al-Ahkam al-Sultaniyyah, Al-Mawardi 356; Al-Ahkam al-Sultaniyyah, Al-Farra 288.

(2) Tuhfat al-Muhtaj 2/419.

(3) See: Ahkam al-Qur'an, Al-Kiya al-Harrasi 4/204; At-Tawdih fi Sharh at-Tanqih 1/421; Al-Bahr al-Muhit 1/251.

(4) See: Ajwiyat al-Abdasi 425.

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The sentence indicates that in the absence of the Imam, the Muslim community (the public) will be his substitute (1).

The use of this terminology is quite common among Maliki jurists. Their core principle is: **"In the absence of the Sultan, the matters entrusted to the Muslim community, which were permissible to do under the Sultan's rule, all decisions made correctly and properly regarding them will be effective"** (2). And this is only applicable when it is possible to establish *Hadd* (prescribed punishments) without creating disorder and strife (*fitna*). But if it leads toward disorder, there is no doubt about it being prohibited (3).

Some jurists hold the opinion that in the absence of rulers, ordinary people do not have the right to implement *Hadd* or the provisions associated with rulers. As-Samnani says:

"If an era becomes void of an Imam and a victorious ruler—even if we assume this for the sake of argument—then those provisions that were mandatory upon them in the presence of the Imam will remain mandatory upon them even in his absence. And those provisions that were not

mandatory upon them in the presence of the Imam or were not lawful for them to do, they will not be commanded to perform those tasks in the absence of the Imam. The example of the first type is: Zakat, Salat, and other acts of worship that they perform individually, and those contracts that they execute. The example of the second type is: cutting off the hand for theft, imposing Jizya, reclaiming barren land, and all such matters that are entrusted to the Imam. Because they cannot apply these to each other and cannot receive them from each other. Similarly, conducting judicial proceedings and assuming responsibility for them are also included in this" (4).

Based on this, another important issue has arisen, which is related to countries under the occupation of disbelievers; what is the ruling regarding those judges appointed by the non-believer ruler who settle disputes among Muslims according to their own choice?

A group of jurists has clearly expressed the opinion that their (the judge's) appointment is valid in consideration of the greater interest of Muslims, even though...

(1) See: At-Taj wal-Iklil 5/498; Sharh al-Zurqani 'ala Mukhtasar al-Khalil 4/376; Minah al-Jalil 4/318.
(2) Al-Mi'yar al-Mu'rib 10/102-103; also see: Mawahib al-Jalil 4/199; Ash-Sharh al-Kabir lil-Dardir 2/436.
(3) Ahkam al-Qur'an lil-Kiya al-Harrasi 2/292; Ahkam al-Qur'an li-Ibn al-Faras 3/329; Ibn Taymiyyah has a different perspective on this matter, see: Majmu' al-Fatawa 34/175-176.

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(4) Rawdatul Qudat wa Tariqun Najat 1/78.

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...it was issued by a disbeliever who has no guardianship over Muslims, because the objective is

to ensure the welfare of the Muslims.

Imam al-Maziri was asked about the judicial proceedings originating from the judge of Sicily, where Muslims were living under disbelievers. He said: **(To restrain people from one another, the appointment of judges, trustees (trusted persons), and others by a disbeliever is obligatory; some jurists of the school even claimed that it is rationally obligatory. Although the appointment of this judge by a disbeliever is invalid, if the subjects demand it and he appoints him for them out of necessity, it will not cause any defect in the enforcement of his judgment or decree, just as it would be if a Muslim Sultan had appointed him.) (1)**

Al-Izz bin Abdus Salam says: **(If disbelievers seize a vast territory and appoint someone to judicial responsibility who carries out general public welfare tasks for Muslims, then outwardly all of this will be implemented for the purpose of achieving public welfare and removing widespread strife and corruption. Because it is far from the mercy of the Sharia and its aim for the welfare of the servants that general public welfare would be paralyzed and widespread strife tolerated simply because there is a lack of perfection in the appointer, even though the appointee is qualified; and this is a remote possibility). (2)**

Al-Qurtubi says: **(Some scholars have said: In this verse, there is something that makes it permissible for a virtuous person to work under a sinful person or a disbelieving Sultan, on the condition that he knows he has been given responsibility for tasks in which he will not be hindered, so he can rectify whatever he wishes. But if his work follows the desire and whim of that sinful person, then it is not permissible. A group of people said: This was specific only to Joseph (peace be upon him), and it is not permissible currently; however, according to our mentioned condition, the first opinion is more acceptable). (3)**

Ibn Taymiyyah praised such guardianship and said:

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(1) Asna al-Matajir, al-Wansharisi 50 - 51.

(2) Al-Qawa'id al-Kubra 1/121 - 122.

(3) Al-Jami' li-Ahkam al-Qur'an 9/215.

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And included in this chapter is Yusuf (Joseph) as-Siddiq's acceptance of responsibility for the treasuries of the land under the King of Egypt; rather, it was his own request for that responsibility, even though the King and his people were disbelievers at that time. As Allah Almighty says: **"And Joseph had already come to you before with clear proofs, but you remained in doubt about that which he brought to you."** [Ghafir: 34]. Allah Almighty further says about him: **"O my two companions of the prison, are many different lords better or Allah, the One, the Prevailing? You worship not besides Him except [mere] names you have named, you and your fathers."** [Yusuf: 39-40]. It is well known that despite their disbelief, there had to be a specific custom and method for collecting wealth and spending it for the welfare of the King's council, his family, the army, and the subjects—which was not conducted according to the way of the Prophets and justice. It was not possible for Yusuf (peace be upon him) to do everything according to his will, which he considered to be the religion of Allah, because that people did not respond to his call. However, he performed as much as possible of justice and excellence (ihsan). Through state power, he achieved such honor and dignity for the believing members of his family that would not have been possible without such power. And all of this is included in Allah's saying: **"So fear Allah as much as you are able."** [At-Taghabun: 16].

However, some jurists (fuqaha) have imposed a condition in this regard that the Muslim community must be satisfied with him. If the Muslim community is satisfied with him, then his

ruling or decision will be considered like the ruling of a judge (qadi) appointed by an Imam. And if they are not satisfied—for example, if Christians appoint someone as a leader—then his judicial functions will not be valid. In this case, the satisfaction of the Muslims is what matters, not the appointment itself.

Some Hanafi jurists have prohibited this and stipulated that the granting of responsibility should come from the Muslims, not from them (the disbelievers). Ibn al-Humam says:

(When there is no Sultan or head of state, and there is no one from whom it is valid to accept a position—as is currently happening in some Muslim lands where disbelievers have triumphed over them, such as Córdoba in the Maghreb region, Valencia, and the Habsha (Abyssinia) region; and they have allowed Muslims to reside there on the condition that wealth will be taken from them—in such a situation, it is obligatory (wajib) upon them (the Muslims) to agree on nominating one from among themselves whom they will make a Wali (guardian). Then he will appoint a judge or he himself will conduct judicial proceedings among them. Likewise, they will also appoint an Imam for themselves.)

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(1) Majmu' al-Fatawa 20/56-57, and regarding the ruling on Yusuf's (peace be upon him) acceptance of responsibility, see: Al-Ahkam as-Sultaniyyah 127, Ruh al-Ma'ani 7/7.
(2) Ajwazat al-Abdusi 425.

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(He) will lead the Friday (Jumu'ah) prayer for them (1).

A group of jurists from the Hanafi school of thought have expressed a difference of opinion on

this matter and did not consider it a condition (2).

Under normal circumstances, Muslims shall elect their ruler—there is no doubt about regarding this as a condition. However, in times of emergency and lack of capability, there is no scope for such conditions for them. For this reason, the public interest of Muslims...

...it is not appropriate for it to be destroyed (3).

This is an acceptable political ijtihad because the true purpose of the judiciary has been taken into consideration. Therefore, if he judges among them according to the Shari'ah, protects their rights, resolves matters among them through justice, and they are satisfied with it, then the matter of his appointment by disbelievers in an emergency will not have an effect. And through this, no mandatory provision of the Shari'ah will be abolished.

— Keeping the rulings of rebels effective:

One of the Fiqh ijtihads taken with public interest in mind is the well-known opinion among jurists that judicial verdicts delivered during the period of rebel rule shall remain effective. Although the fundamental principle of the judiciary is that it should be issued by the representatives of the ruler, and the rebels are those who oppose him; therefore, according to the fundamental principle, their judicial verdicts should not be considered valid. However, this fundamental principle was not focused upon; instead, a stronger factor was taken into consideration, which is the protection of rights and the removal of harm from people.

Therefore, if the rebels implement any ruling regarding the enforcement of penal codes (Hudud) or the collection of Zakat and Jizya, then according to most jurists, these will not be reimposed upon

them, and the verdicts of their judges will remain in effect (4).

(1) Fath al-Qadir by Ibn al-Humam, 7/264; for similar opinions, see: Al-Fatawa al-Hindiyyah, 1/146.
(2) See: Al-Bahr al-Ra'iq, 6/298; Al-Fatawa al-Hindiyyah, 3/307; Hashiyah Ibn Abidin, 2/144, 4/175 and 5/388-399.
(3) To discuss this issue, see: 'As-Siyasatush Shar'iyyah Hala Giyabi Hukmin Islamiyyin 'An Diyaril Muslimin' by Ahmad Muhiyuddin Saleh, pages: 253-257 and 268-270. I have also taken assistance from this book to find sources for many related citations.
(4) This is the opinion of the Maliki, Shafi'i, and Hanbali schools of jurisprudence, and some jurists of the Hanafı school. See: Al-Mughni, 8/537; Sharhu Muntahal Iradat, 3/392; At-Tawdih fi Sharhi Mukhtasar Ibn al-Hajib, 8/214; Hashiyah...

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In the judicial system, the consideration is that the judge should be a just person appointed by the Imam (head of state). However, this matter has been relaxed in the case of rebels; as a result, for the sake of necessity, the verdicts given by them have been made effective. Their rebellion and the causing of loss to life and property did not invalidate their testimony and judicial proceedings in light of their own interpretation (ta'wil). This is because reclaiming rights from people again would be difficult and harmful for them. And this judicial process may last for a long duration. (1)

This scenario is contrary to the general principle that the validity of actions depends on legitimate leadership. However, as Izz al-Din ibn 'Abd al-Salam says:

"Sometimes general activities are carried out even without legitimate leadership, as happens in the case of the activities of rebel Imams. Despite definitely not having any legitimate leadership, their activities become effective. Their activities and appointments..."

"It has been implemented only for the needs of the general public." (2)

Reason: "If we had rejected their judicial proceedings, the affairs of the Muslims would have reached a standstill, and the fundamental principles of the religion would have been invalidated." (3)

However, the acceptability of this judgment and testimony of rebels is conditional upon Shari'a principles, namely that the rebellion must fall within the scope of acceptable interpretation (Ta'wil). But if the judge is among those who consider the blood and property of the righteous party (Ahl al-Adl) to be permissible, then his judgment will not be valid. Because he is not righteous. (4)

= Ad-Dusuqi 4/300, Rawdat al-Talibin 10/53, Al-Hawi al-Kabir 13/135, Al-Mabsut 10/135. Al-Qarafi has narrated a consensus regarding the implementation of the actions of rebels; see: Al-Furuq 4/35. The Hanafis also agree on this matter that if rebels appoint a judge from among themselves and he delivers a verdict, his verdict will be effective. And if they seize property and spend it, they shall be absolved of liability. Otherwise, it will be obligatory for a solvent person to return it. See: Fath al-Qadir, Ibn al-Humam 6/105 and 108-109, Bada'i al-Sana'i 7/142, Al-Bahr al-Ra'iq 5/154, Ahkam al-Qur'an (Jassas) 3/535. According to one opinion in the Maliki school, the verdicts of their judges will not be effective, and the Zakat they collected will not be sufficient; see: At-Tawdih fi Sharh Mukhtasar al-Hajib 8/214. This is also the opinion of Ibn Hazm in Al-Muhalla 11/361-354.

(1) See: Al-Mughni 8/537.

(2) Al-Qawa'id al-Kubra 1/111.

(3) Ghiyath al-Umam 374.

(4) See: Al-Mughni 8/537, Rawdat al-Talibin 10/53, Al-Hawi al-Kabir 13/134-135. Here, the intention is to consider wealth permissible outside the battlefield; otherwise, during war, they all consider it permissible. See: Nihayat al-Muhtaj 7/405.

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But if the judge is not a misinterpreter, then his judgments must be reviewed; in such a case, correct judgments will be implemented, and erroneous ones will be discarded. (1)

The evidence for implementing the verdicts of the rebels' judges and accepting their testimony is: tribulations and wars occurred during the era of the Companions and the Successors, yet neither side raised any objection against the other in this regard, nor did they nullify their judgments. (2)

Zuhri says: When the tribulation spread, the Companions of the Messenger of Allah (peace be upon him) were present in large numbers. Their unanimous decision was that no retribution (Qisas) or blood money would be taken for any bloodshed or damage caused by the misinterpretation of the Quran, except for that property which is found existing in its original form. (3)

Therefore, this is a research-based (ijtihadi) perspective that considers the general public interest of the people. And this is the philosophy of Sharia politics, which is established on such a welfare-oriented perspective that is not contrary to Sharia. It takes into account that human conditions are ever-changing, so attention is given to such reliable research that gives importance to this change. This...

For this reason, even the matter of implementing the actions of rebels may not always serve the public interest. Consequently, later jurists (fuqaha) of Andalusia issued fatwas against enforcing their judges' rulings and accepting their testimonies (4), despite this being contrary to the reliable opinion of the Maliki school. They likely prioritized the greater public interest; thus, this was considered a type of punitive measure and penalty to deter them from forbidden rebellion.

- Legitimizing marriage to a father's wife out of fear of apostasy:

Among historical events is what occurred with the Tatar Sultan Muizzuddin Mahmud, who is called...

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(1) See: Hashiyat al-Dasuqi 4/300.

(2) See: Al-Ishraf 'ala Nukat Masa'il al-Khilaf, Qadi Abdul Wahhab 2/850; and for the scholars' opinions on this compensation, see: At-Tawwil fı Ibahat ad-Dima 49-55.

(3) This is narrated by Ibn Abi Shaybah in his Musannaf (27953) and Abdur Razzaq in his Musannaf (18907), whose chain of transmission is broken. See: Al-Muhalla 11/345, which is authentic up to az-Zuhri. See: Irwa' al-Ghalil 8/116.

(4) See: Asna al-Matajir 51.

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Ghazan ascended the throne in the year 693 AH. A year later, he embraced Islam at the hand of his deputy emir, Nawruz (1). It was through him that Islam spread widely among the Tatars. He ruled over a vast territory. He had married one of his father's wives. Upon his conversion to Islam, he was informed that in Islam, marrying one's father's wives is prohibited (2). This caused him to be on the verge of apostasy. However, when some of his close associates provided a fatwa legitimizing the marriage, he remained steadfast in Islam.

Ibn Hajar provides a detailed account of this event, saying:

"His kingdom encompassed all of Khorasan, Iraq, Persia, Rome, Azerbaijan, and Al-Jazira. He embraced Islam at the hands of Sheikh Sadruddin Ibrahim ibn Sa'dullah ibn Hamuyah al-Juwayni. At that time, he was slightly over twenty years old. The day of his conversion was a magnificent day. He entered a bathhouse (hammam) and performed a ritual bath (ghusl), then convened a gathering and bore witness to the Truth in public. This created a great sensation among the attendees. This took place in the month of Sha'ban in the year 694 AH. Nawruz taught him to recite portions of the Quran and taught him how to pray. That year, he observed the fast for the full month of Ramadan. Ghazan spoke in Persian with his close associates and understood most of what was said to him in Arabic."

Upon assuming power, he adopted the policies of his great-grandfather Genghis Khan and focused on building an army, securing borders, developing the country, and putting an end to bloodshed.

When he embraced Islam, he was told: Islam prohibits marriage to one's father's wives. He had incorporated his father's wives among his own. His favorite among them was Bulughan Khatun, who was his father's senior wife. At that point, he resolved to leave Islam. Some of his close companions told him: "Your father was a disbeliever, and Bulughan was not bound to him by any marriage contract..."

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(1) To learn about this emir's biography, his influence on the Tatars' conversion to Islam, and the scholars' statements on this matter, see: Ibn

...Taimiyyah and the Mughals, Muhammad Bara Yasin, pages 29 - 36.

(2) Because he embraced Islam in a state where his father's wife, who is a mahram (a person with whom marriage is forbidden), was under his marriage. Therefore, she cannot be permitted to stay with him, because such a marriage contract is not valid in Islam. This is a matter of consensus (ijma) among the scholars. See: Al-Ijma, Ibn al-Mundhir 87; At-Tamhid, Ibn Abd al-Barr 12/23; Bidayat al-Mujtahid 3/71; Al-Mughni 7/151; Al-Iqna' fi Masa'il al-Ijma', Ibn al-Qattan 2/32; Zad al-Ma'ad 5/124; Fath al-Qadir, Ibn al-Humam 3/415.

The marriage is valid; rather, you were traveling with her, so complete the marriage contract with her because she is lawful for you. Subsequently, he did so; and had he not done so, he would have abandoned Islam and become an apostate. For the person who issued this fatwa for the sake of this maslahah (public welfare), his action has been deemed excellent. (1)

Imam adh-Dhahabi, describing the impact of this Sultan's conversion to Islam on the Muslims, says: **“Thereupon, Nawroz began teaching King Ghazan some parts of the Quran, and he strove to learn it. When the month of Ramadan arrived, he observed the fast. If the transformation that occurred within him due to Islam had not taken place, then after conquering Syria, he would have made it lawful for himself. Therefore, all praise and grace belong to Allah alone!”** (2)

Al-Safadi has narrated this incident from Irbili and further added: **“He says: To those who criticized the issuer of the fatwa, he replied: I have spoken according to the outward provisions of the Sharia. And if I have shown leniency, it was far easier for Ghazan to be involved in a forbidden act than for him to become a disbeliever and emerge as an enemy of Islam and Muslims. Then his statement was praised, and the sincerity of his intention became evident.”** (3)

Although Ibn Hajar and Al-Safadi described the support for this view, they did not express it explicitly. However, Imam ash-Shawkani was very clear about the correctness of this fatwa. He

said: **“Rather, this is better; even if there were thousands of women under him in a state similar to fornication. For a person like this Sultan, who governs most of the Muslim lands, his Islam contains a benefit or welfare that grants legitimacy to matters even greater than this; for if he were put in a severe crisis and an uncompromising attitude was adopted regarding the truth with him, it would have pushed him towards apostasy. May Allah have mercy on that Mufti.”** (4)

In analyzing this acclaimed incident, a complex issue arises where a conflict between two perspectives is observed:

The first perspective: This is the maslahah or welfare-oriented perspective, which focuses on the widespread chaos and harm that would have occurred if this marriage had been prohibited. Anyone who observes this matter will present evidence in its support through Usul (principles) and Sharia methodology.

(1) Al-Durar al-Kaminah fi A'yan al-Mi'at al-Thaminah 4/248.
(2) Tarikh al-Islam 15/690.
(3) A'yan al-Asr wa A'wan al-Nasr 9/4.

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(4) Al-Badrut Tali 2/2-3

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The general principle is to choose the lesser of two evils so that the more serious evil can be averted. This matter becomes even more significant here due to weakness, inability, and lack of

capability. According to this perspective, it is an acceptable "Siyasah Shar'iyyah" (Sharia-compliant policy) for protecting human interests and averting harm, which is not in any way contrary to Sharia. Although the matter was fundamentally forbidden and haram, in this exceptional circumstance, it is not a violation of Sharia.

The Second Perspective: This is a perspective that takes into account Sharia and its boundaries (Hudud). What is the criterion for which haram acts can be made permissible to avert this kind of evil? The haram acts are the boundaries set by the Legislator. Therefore, who has given an individual the authority to change Allah's boundaries based solely on the fear of potential evil? If we open this path, then this complexity will increase further—where will this evil end? If it is known that adultery or drinking alcohol is haram, then will it become permissible for him? If someone accepts this, then if it is known that idol worship is disbelief (kufr) and praying to anyone other than Allah is shirk (polytheism), then will it be permissible for him to avert that evil?

What appears to me is that this matter does not fall under the category of issuing a fatwa or describing a Sharia ruling; rather, it falls under the category of repelling an aggressor and removing hardship from Muslims. It is much like a person who, being helpless or forced, utters a haram statement or a word of disbelief. This is because such a ruler becoming an apostate is a major disaster for Muslims. As a result, it can lead to violations of sanctity and dignity, bloodshed, and the deprivation of rights. Therefore, words will be spoken to him by which this evil is repelled, and in this regard, the speaker will be praised. This is a "Siyasah Shar'iyyah" in protecting the interests of Muslims and averting harm from them. However, this is not a subject for fatwa or juristic (fiqhi) discussion. For this reason, living with his wife will not be permissible for such a ruler, and he will have no excuse before Allah. Sharia's ruling will remain unchanged for him, and he must be held accountable for it.

For this reason, if a person wants to perform such a haram act or wants to become an apostate, we will not declare that haram act permissible for him out of fear of his apostasy. Rather, he will be prevented, even if he becomes an apostate. In this case, it cannot be said that averting the evil

of apostasy is a priority. This is because this evil is not (from a Sharia perspective) considered, since the reason for it is flawed and unacceptable. The subject under discussion is also similar. However, here only the matter of removing harm from Muslims has been considered; in reality, the ruling (hukum) has not been described.

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Or it can be stated in another language as follows: Regarding this incident, the fatwa and Shari'i ruling is to grant permission for the verbal utterance of what Allah has forbidden in order to alleviate this intense necessity.

- The killing of their own underage children by the Ottoman Sultans:

It was a well-known custom in the Ottoman Sultanate that before assuming power, the Sultans would kill underage children out of fear that they might later engage in a dispute over the claim to the throne.

A noteworthy point is the recognition of the legality of this act based on Siyasah Shar'iyyah (state policy) by a certain renowned jurist, namely the Hanbali jurist Mar'i ibn Yusuf (may Allah have mercy on him). Presenting this issue, he described: (To my knowledge, no one has preceded this act before. Although a sound natural disposition may outwardly feel repulsion toward it, in true judgment, there lies extensive welfare and abundant benefit within it. Nevertheless, its legality in a blanket manner is not clear to me; because they are children, and in reality, they have committed no crime. Moreover, the occurrence of rebellion or fitna (strife) from their side in the future is an

uncertain matter. In such cases, it is more appropriate to abstain from killing. Perhaps those scholars who have issued fatwas of legality considered their killing permissible and permitted it based on the logic that "it is permissible to kill one-third for the correction of two-thirds"—they have elevated a strong assumption to the level of certain belief, although it contains extreme inconsistency. Furthermore, it is possible to say that killing them is not Sharia-wise but politically permissible, and the door of politics is wider than the door of Sharia). (1)

Next, he quoted the statements of scholars regarding the consideration of public welfare and the scope of Siyasah Shar'iyyah in achieving it. He mentions that the standard of Sharia is to prioritize the stronger public welfare, even if some harm exists within it. Then, although hesitant at first, he later firmly issued a ruling, stating: (When a boy reaches puberty showing signs of fitna, it is appropriate to say that killing him is permissible; for then he becomes a potent source of disaster and fitna. However, before that, perhaps Allah will find a new way. But in the case of fear, even before the situation worsens and fitna takes a manifest form, based on signs and circumstantial evidence, killing from this perspective might be permissible).

(1) Qala'id al-Uqyan fi Fadha'il Al Uthman, page 135.

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...The matter is grave, and the remorse and pain become more intense (1).

He then mentions some incidents in favor of the suitability of killing some of his children and describes the harm and fitna-fasad (mischief/strife) that were created for others as a result of abandoning such acts, and the ensuing fighting that spread among them. And (according to his claim) it is better to kill that one individual than for fifty thousand people to be killed because of that one person (2).

In fact, this is a vile fatwa that has no relation to Sharia-based administrative policy (Siyasah

Shar'iyyah) and is not consistent with the principles or boundaries of administrative policy. The matter becomes clear through the review of three central principles of Sharia-based administrative policy:

First Principle: Sharia governance refers to ijtihad concerning all matters related to public interest where there is no explicit religious instruction (nass). Therefore, it is an ijtihad within the boundaries of Sharia. A perspective based on so-called public interest that opposes Sharia interests is a policy contrary to Sharia, having no connection with Sharia governance. Thus, presenting evidence citing public interest against this ruling is exactly like opposing other prohibited acts such as adultery, alcohol, and usury by citing public interest. Therefore, there is no scope to accept such matters by citing Sharia governance.

Sometimes, disagreements may arise regarding Sharia governance in specific cases where there is room for debate on whether the matter falls under explicit religious instructions. In such situations, some consider performing ijtihad permissible, while others oppose it. This is acceptable, as determining the scope of an instruction is also a research-based (ijtihad-related) matter. However, there are certain areas that are definitely and by consensus outside this, which include making such definitive and essential prohibited matters lawful.

Second Principle: This "interest" which opposes explicit instructions is not a true interest in the eyes of the Lawgiver and has no validity. Far from calling it "more acceptable between two interests," it is not even possible to include it under "choosing the lesser of two evils." This does not fall under Sharia consideration at all, and its place in discussions about balancing acceptable interests is far-fetched.

(1) Qala'id al-Uqyan, 137.

(2) See: Qala'id al-Uqyan, 137-138.

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And for this reason, the real issue is that it is a certain corruption (fasad), which has been committed under the pretext of imaginary maslahah (interest). Therefore, in the eyes of Sharia, it is void and has no validity. If any Muslim followed such a perspective of imaginary maslahah, then no Muslim's blood or property would be protected, and it would become easy to violate all prohibited acts under the influence of imaginary notions and doubts.

Third Principle: This imaginary corruption—which is falling into fitna (strife) and mutual fighting among Muslims—is a major corruption. However, Sharia has not neglected to describe this matter; rather, Sharia has formulated a complete manhaj (methodology) to protect Muslims from it and how to confront it if it occurs. Conversely, showing laxity regarding bloodshed and killing innocent people is a cause for instigating fitna, not its remedy. Therefore, the perspective of maslahah is to show the path to solving these according to Sharia principles, not to validate any perspective just by citing maslahah.

For this reason, the jurists have taken a firm stance regarding the sanctity of a Muslim's blood, and they have differed concerning an aggressive Muslim from whose harm there is no way to escape except by killing him—would it be permissible to kill him as a "ta'zir" (punishment)?

Sharia has prescribed the death penalty for certain specific crimes, such as: Qisas (retaliation), Hirabah (banditry or terrorism), apostasy, adultery by a married person, and similar rulings prescribed by Sharia. Apart from these, killing is not permissible in any other case, though there are disagreements among jurists regarding receiving the death penalty as ta'zir for some specific crimes...

...exists. For example: the Muslim spy who spies for the Harbi (belligerent) disbelievers (1), and the one who calls toward bid’ah (innovation) (2).

(1) The scholars have disagreed on this matter. Some have said: He shall be killed—this is the opinion of the Maliki and some Hanbali scholars, while Imam Ahmad remained silent on this issue. Others have said: He shall not be killed—this is the opinion of the Hanafi and Shafi'i schools of thought, and Imam Nawawi has mentioned it as the opinion of the majority of jurists. See: Al-Kharaj 207; Al-Bahr al-Raiq 5/125; Al-Bayan wa al-Tahsil 2/537; Sharh Mukhtasar Khalil lil-Kharashi 9/493; Ash-Sharh al-Kabir lid-Dardir 2/182; Al-Umm 5/609; Al-Muhadhdhab 3/292; Al-Furu 10/166; Sharh Nawawi ‘ala Sahih Muslim 12/67. For details on the disagreement, also see: Ibn al-Mundhir's Al-Awsat 3/416-417; Sharh Ibn Battal 3/164; Majmu' al-Fatawa 25/405.

(2) Ibn Taymiyyah has mentioned that this is the opinion of Imam Malik and some followers of Shafi'i and Ahmad (may Allah have mercy on them). See: Majmu' al-Fatawa 28/109 and 35/405. He further mentioned that there is a disagreement as to whether this punishment is for apostasy or for corruption (fasad)—

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An example of administering ta'zir (discretionary punishment) through the death penalty in cases

of habitual offending is—when the death penalty has been made Sharia-compliant for that category of crime. For example: killing with an object that is not heavy, sodomy, or clandestine killing for the purpose of misappropriating wealth (1).

Ibn Taymiyyah has described the disagreement on this matter. He mentioned that there are four opinions among the jurists regarding the maximum limit of ta'zir:

First opinion: It has no specific limit; rather, it depends on public welfare or maslahah.
Second opinion: In a sin for which a hadd (fixed penalty) or punishment is prescribed, the ta'zir shall not reach the level of that punishment.
Third opinion: Ta'zir shall not reach the minimum hadd—forty or eighty lashes.
Fourth opinion: Ta'zir shall not exceed ten lashes.

Subsequently, he mentions: according to the first opinion, can it reach the extent of the death penalty?

He mentioned two opinions on this matter. The first is—it is permissible; such as killing a Muslim spy. This is the opinion of Imam Malik and some followers of Imam Ahmad, and Ibn al-Aqil preferred this view.

Some followers of Imam Shafi'i and Imam Ahmad have mentioned the permissibility of killing the one who calls toward bid’ah and the one whose harm cannot be removed except by the death penalty. The Hanafis have clearly stated their position regarding the killer who uses a heavy object and the sodomite (2).

These are specific crimes regarding which there has been disagreement among the scholars as to whether the perpetrator is deserving of the death penalty. Consequently, disagreement has also arisen regarding the ruling for a harmful criminal whose harm cannot be countered except by the death penalty. As a result, those who have permitted his killing say: (Because the harmful person is like an aggressor; therefore

If an assailant cannot be repelled except by killing, then he shall be killed (3).

= See: 28/346; The point that can be used as evidence to support the legality of the death penalty as a **ta'zir** (discretionary) punishment is the second aspect, which is killing due to causing chaos; for this is a **ta'ziri** punishment. Conversely, the matter of apostasy or **ridda** is a prescribed **hadd** (fixed) punishment.

(1) This is the school of the Hanafis; see: **Hashiya Ibn Abidin** 4/63, **Al-Mabsut** 26/124, and see **Majmu'ul Fatawa** 28/346.
(2) See: **Majmu'ul Fatawa** 35/405-406 and see **At-Turukul Hukmiyyah** 1/282-285.
(3) **Majmu'ul Fatawa** 28/377.

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Even for a criminal who has committed an offense and remains persistent in it, and whose crime cannot be suppressed except by killing him, disagreement exists among the jurists; and this was done as a precautionary measure regarding **maslaha** or public welfare. In that case, how can it be possible to kill someone who has no fault, merely out of fear of an imaginary harm occurring on their part!

This is such a grave deviation on the part of the Shaykh that it is not to be followed. It does not become acceptable simply because it originated from an eminent scholar; rather, it is among his errors—may Allah forgive him.

- Killing one-third of the people for the reform of the remaining two-thirds:

The previous opinion encourages us to examine this widely circulated statement attributed to Imam Malik. This is because it has been used as evidence in support of that strange view. However, this statement is not a verse [of the Quran], nor a sahih Hadith, nor is it a reliable statement from the **Salaf** (predecessors). If it were true that this provides proof for such opinions, it would only reveal its futility and invalidity. Therefore, it is appropriate to prove the fallacy of this statement through such matters, rather than relying on it to legitimize these grave mistakes.

The attribution of this statement to Imam Malik originates from Al-Juwayni (d. 487 AH). He says: (Malik, may Allah be pleased with him, followed this principle regarding permitting the death penalty in cases of serious accusations for rulers; even reliable individuals have narrated from him that he said: I would kill one-third of the Ummah to preserve two-thirds of the Ummah) (1).

Al-Ghazali (d. 505 AH) also followed him in this attribution and said: (Malik, may Allah be pleased with him, placed such emphasis on **maslaha** or public interest that he held the view of killing one-third of the Ummah for the reform of two-thirds of the Ummah) (2).

This attribution to Imam Malik is found neither in any of his books nor in any narration from the followers of his school. Rather, Maliki jurists have consistently denied this statement and established the attribution to Imam Malik as an error.

Ibn al-Arabi (d. 543 AH) explained the reason for the error of those who thought that this was [the view of] Imam Malik...

Statement. He says:

(1) Al-Burhan fi Usul al-Fiqh, al-Juwayni 2/169; and see: 2/207, Ghiyath al-Umam 219.

(2) Al-Mankhul 454; and see: Shifa al-Ghalil 247.

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The Hanafis and Shafi'is of Khorasan have attributed the view to Imam Malik that it is necessary to destroy a portion of the Ummah for the sake of public welfare. However, he is completely free from this. They only heard of his consideration of 'Maslahat' or public interest and, according to their perception, took it to such an extreme that they eventually reached this limit. (1)

Al-Qarafı (d. 684 AH) has strictly denied this attribution. He says: "Similarly, what Imam al-Haramayn narrated from Imam Malik in his book 'Al-Burhan'—that Malik (may Allah have mercy on him) considered it permissible to kill one-third of the Ummah for the welfare of two-thirds—the Malikis strongly deny this. It does not exist in their (the Malikis') books; rather, it is only found in the books of their opponents who narrated it from them, yet they themselves found no basis for it." (2)

Al-Shamma' (d. 833 AH) mentions various aspects of the baselessness of this attribution to Imam Malik, saying:

Secondly: What Imam al-Haramayn claimed, none of Imam Malik's followers narrated from him, and there is no mention of it in any legal issue (mas'alah); which proves its invalidity.

Thirdly: What he narrated about Imam Malik, he likely imposed upon him as an inevitable consequence (meaning, it is not Imam Malik's actual statement, but rather a logical conclusion attributed to his statements).

Fourthly: This is a matter of such gravity and necessity of reporting that the account of a single person is not acceptable; even if it were someone who had met Imam Malik directly and acquired knowledge from him. Under such circumstances, how can it be acceptable when there is a gap of

several generations between him and Imam Malik!

Fifthly: In determining the school of thought (madhhab) of the Imams, one cannot rely on what is found in the books of their opponents. (3)

Al-Shamma' presented various evidences for the baselessness of this view, one of which is: Allah the Almighty forbade fighting the polytheists in Makkah—despite their disbelief and deserving to be killed—so that some (unknown) Muslims residing there would not be killed. Allah the Almighty says: "Had there not been believing men and believing women whom you did not know, that you might have trampled them and on whose account a sin would have accrued to you without (your) knowledge (He would have allowed you to fight)" [Surah Al-Fath: 25]. Therefore, He provided protection even from killing disbelievers (for the sake of protecting Muslim lives)...

(1) Al-Qabas fi Sharh Muwatta Malik bin Anas 3/460.
(2) Nafa'is al-Usul 9/4092, and see: Mawahib al-Jalil 5/430.

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(3) Matali’ut Tamam 115

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He did not consider the matter of their reformation for the sake of protecting a few Muslims; so what can be said of the person who claims that one-third of the Muslims should be killed solely for the purpose of reformation! (1)

And it has been mentioned that Imam Malik prohibited burning the ships of the disbelievers or their forts if any Muslim resides there; so how can it be said that his school of thought is to kill a third! (2)

To highlight the ugliness of this statement, he imposed this logical necessity upon them: that if three people were in an extreme state of desperation, it would be permissible for them to consume the flesh of one of them for the sake of necessity, yet there is no one among the followers of Islam who would say such a thing. (3)

Abu Hamid bin al-Arabi al-Fasi (1052 AH) wrote a long response (4) refuting this statement attributed to the school of Imam Malik, which he began with the following statement:

(Imam al-Haramayn narrated this from Malik, yet he was a follower of the Shafi'i school; he did not practice the Maliki school and was not connected with its narrators or their narrations from Imam Malik. For this reason, the practice of the noble scholars is not to rely on the narrations of opponents. Moreover, he did not narrate it for the purpose of acceptance, and the Maliki jurists reject this matter narrated from Imam Malik, and none of them narrated it through his chain). (5)

Muhammad bin Abdul Qadir al-Fasi (1116 AH) said:

(It is not permissible to record this in books so that weak students are not misled by it, and it is not consistent with any of the Sharia principles). (6)

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(1) He discussed the method of deriving evidence from this verse in detail, see: Matali’ut Tamam 118-122.

(2) Matali’ut Tamam 122.

(3) See: Matali’ut Tamam 123.

(4) This response was published under the following title: "Refutation of the attribution to Imam Malik regarding the permissibility of killing one-third for the sake of public interest", edited by: Rashid al-Hamdadi, Majallatul Madhahibil Malikiyah, Issue 10, pp. 110-115.

(5) An-Nawazil al-Jadidah al-Kubra 3/17; and in almost the same sense, Ibn Shas rejected the authenticity of this statement's attribution to Imam Malik, see: Al-Bahr al-Muhit 8/84.
(6) Hashiyah al-Bannani on Sharh al-Zarkani 7/55.

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Al-Zurqani (1099 AH), in his commentary on Mukhtasar Khalil, explained this statement by saying that the purpose is to kill one-third of the mischief-makers when it is impossible to remove the harm of the remaining two-thirds of mischief-makers without adopting this method. Then he said:

(Contrary to the notion spread among some people that it is permissible to reform two-thirds of the mischief-makers by killing a pure one-third of people—this is a heinous mistake; may Allah protect us from saying such things. Moreover, mischief-makers are generally not suppressed by the killing of good people; even if it were assumed for the sake of argument, it cannot be adopted outwardly) (1).

Al-Bannani (1194 AH) criticized him, saying:

(And the explanation he [meaning Al-Zurqani] gave regarding Imam al-Haramayn—that his intention was to kill one-third of the mischief-makers when it is determined as the only way to reform the rest—is not correct. It is not permissible to say such things. For the Legislator has prescribed the establishment of 'Hudud' (prescribed punishments) for the reformation of Muslims only when its proper causes are proven. And whom the Sunnah cannot reform, Allah does not reform. Such erroneous interpretations incite many mischief-making oppressors to shed the blood

of Muslims) (2).

Al-Mahdi al-Wazzani (1342 AH), in his vast encyclopedia 'Al-Nawazil al-Jadidah al-Kubra', also known as 'Al-Mi'yar al-Jadid' (3), gathered the statements of Maliki jurists in rejecting this statement.

Ash-Shanqiti (1393 AH) said:

(What the author—may Allah have mercy on him—mentioned, that Imam Malik—may Allah have mercy on him—permitted the killing of one-third to reform two-thirds, was mentioned by Imam al-Juwayni and others on the authority of Imam Malik, which is not correct. None of Imam Malik's students narrated any such thing from him, nor did Imam Malik himself say such a thing) (4).

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(1) Al-Zurqani's commentary on Mukhtasar Khalil 7/55; some Malikis have followed him, see: Al-Fawakih al-Dawani 2/118.
(2) Al-Bannani's marginalia on Al-Zurqani's commentary on Mukhtasar Khalil 7/56.
(3) See: Al-Nawazil al-Jadidah al-Kubra 12/110-113.
(4) Mudhakki-rah fi Usul al-Fiqh 203.

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He says:

"The claim against Imam Malik that he considered it permissible to kill one-third of the Ummah for

the reform of the other two-thirds, and that he deemed the amputation of limbs as a form of ta’zir (discretionary punishment) to be permissible—this is a void claim. Imam Malik did not say this, and none of his followers narrated it from him. As Al-Qarafı, Muhammad ibn al-Hasan al-Bannani, and others have confirmed, it does not exist in any of the books of his madhhab (school of thought). We have studied the Maliki madhhab for a long time and have come to know that the aforementioned claim is void." (1)

Something has been narrated from Al-Maziri that might create confusion regarding the confirmation of this statement's attribution to Imam Malik, where he said: "What Abu al-Ma'ali narrated from Malik is correct."

However, the Maliki jurists have resolved this complexity by saying: "What is narrated from Al-Maziri in Al-Tawdih—where he stated that what Abu al-Ma'ali narrated from Malik is correct—refers back to the beginning part of the statement, which is: Imam Malik (may Allah have mercy on him) established his school of thought in most cases on the basis of 'masalih' (public interest). It does not refer back to the subsequent part where it is mentioned that he spoke of killing one-third of the common people for the reform of the other two-thirds." (2)

This denial of the attribution by the Malikis was so widespread that jurists of other madhhabs also cited it from them. For instance, Al-Tufı said regarding this: "I have not seen this narrated in any of the books of the Maliki madhhab that I have examined. I asked a group of their leading scholars about this, and they said: 'We do not recognize this.'" (3)

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(1) Al-Masalih al-Mursalah 34, included in the lectures attached to the book Rihlah ila Ifriqiyah, from the works of Sheikh Muhammad al-Shanqiti, Dar 'Alam al-Fawa'id.
(2) Hashiyah al-Bannani 'ala Sharh al-Zarqani 7/56; see also: Manh al-Jalil 7/513 - 514. It is mentioned in Mawahib al-Jalil 5/430 (it exists in some manuscripts of Al-Tawdih, but it is in Tawdih al-Sunnah). Al-Arabi al-Fasi mentioned that this can be applied to the issue of tatarus (using human shields). See: Majallat al-Madhhab al-Maliki, issue 10, page 111, for the edited text

of the response.

(3) Sharh Mukhtasar al-Rawdah 3/211; see also: Al-Bahr al-Muhit, Al-Zarkashi 8/84; Idah Turuq al-Istiqamah, Ibn al-Mubarrad 88 - 89; Irshad al-Fuhul, Al-Shawkani 2/184.

You can see that this is a statement that Maliki jurists, from hundreds of years ago until our present age, have been rejecting as being attributed to their Imam and denying its acceptability in their school of thought (Madhhab).

The special attention of the Malikis in rejecting this statement from their school is not just for the sake of scientific scrutiny of the wording, nor is it only because it is not authentically proven from Imam Malik; rather, it is because of their realization of the error and horror of this statement, and because it is derogatory to their school and distorts their discourse regarding 'Masalih al-Mursalah' (public interest).

For this reason, Ibn Hazm did not call it a statement of jurists but rather included it with the statements of the wicked and mischief-makers. He says: **"As some among the oppressors say, it is beneficial to kill one-third for the correction of the two-thirds."**(1)

"And according to the opinion of those wicked ones who say: killing one-third is beneficial for the welfare of the two-thirds; however, these are the statements of the accursed Satan and his followers. Allah Almighty has never considered all His servants more important than a single

Muslim such that he would be destroyed for their sake."(2)

And if we examine this statement, we find that it is wrong from both Shari'ah and practical perspectives:

In terms of reality: the necessity of killing one-third of the people cannot be imagined, such that the correction of the remaining two-thirds will be achieved—in a way that their correction is impossible without this killing. This is an imaginary mental picture that is impossible to conceive in reality. Even if, for the sake of argument, it is called Shari'ah-legally valid, it would still remain a mental image that is impossible to apply. Because it is never possible that the correction of a society in any time or place would depend on a matter where one-third of innocent people must be killed.

For this reason, the jurist Al-Bannani expressed it very subtly when he said: **"And this kind of erroneous interpretation involves many mischief-making oppressors in the bloodshed of Muslims."**(3)

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(1) Al-Fasl fıl-Ahwa'i wal-Nihal 3/99.
(2) Al-Ihkam fi Usul al-Ahkam 8/129.
(3) Hashiyat al-Bannani 'ala Sharh al-Zarqani 7/55.

This is merely an excuse for bloodshed and for legitimizing forbidden matters. Although some benefits might be achieved from it, those benefits do not depend on showing laxity regarding bloodshed; rather, it is possible to establish justice, protect rights, and ensure public welfare without committing these mischiefs.

That this is merely an inconceivable mental concept will become clear to you if you look at the conditions of those rulers in history who were involved in widespread bloodshed and massacre

and whom people remember for their oppression and mischief; you will see that they did not even reach one-tenth of this proportion in their crimes. Nevertheless,

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They have become the subject of extreme condemnation and reproach by the world. In such a situation, how can the killing of one-third of the people—which exceeds even this vast scope of oppression—be considered a form of correction? Therefore, in reality, this is a mistake and not a path toward any welfare.

The error regarding the Sharia is that the Legislator has been extremely strict regarding the shedding of blood and has considered the matter grave. Consequently, He has not permitted it except in specific circumstances and without specific conditions and assurances. Thus, it is impossible for the rulings of Sharia to permit the shedding of the blood of a few Muslims based on the mere assumption that reform is inherent in it. To speak of killing one-third on the basis of this claim—with the idea that the remaining two-thirds will be reformed through it—is beyond imagination! This is an extremely absurd proposition. Rather, shedding the blood of even a single Muslim on the pretext of reforming others is not lawful according to Sharia, let alone one-third of the Muslims. Previously, we mentioned the ruling of the jurists regarding a person whose harm cannot be removed except by killing; even though he is a criminal and his offense is heinous and repetitive, and there is no way to be safe from his harm except by killing him, most jurists have refrained from authorizing his execution. Yet, in that situation, a crime exists that independently warrants punishment, and the certainty of him not desisting from his harm is established. Therefore, from a jurisprudential perspective, there is no basis for unlawfully killing an innocent Muslim on the pretext of mere reform or any such claim.

The claim of killing one-third for the reform of two-thirds is a premise inconsistent with the science of Fiqh (jurisprudence). To reassure you on this matter, let me present a legal issue (mas'ala) and mention how the jurists have described it. The issue is: if it becomes certain to the passengers of a ship that they will all drown unless they throw one person from among them into the sea, otherwise they will all perish; then, will it be lawful to throw one person out by means of a lottery?

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Al-Ghazali says:

(And its meaning is not that: if a group of people are in a boat, and if they throw one from among them, they will survive, otherwise they will all drown. Because this is not a universal (kulliyah) interest, as it results in the destruction of a specific number of people, and it is not a matter that destroys all Muslims entirely. Moreover, no specific person is designated for drowning in the water, unless someone is designated through a lottery, yet there is no Sharia basis for this. Similarly, in the case of a group of people caught in a famine, if they eat one person, they will survive—in this case too, there is no permission, because this interest is not universal.) (1)

Ibnul Arabi says:

(It is not lawful to hold a lottery to throw anyone into the sea; how then can it be permissible in the case of a Muslim? This was unique to Yunus (A.S.)—and in his case and time, it served as a confirmation of the proof of his truthfulness and as a role for the increase of his faith. Because killing for any sin or throwing into fire or the sea is not lawful; rather, the prescribed punishment (Hadd) and discretionary punishment (Ta'zir) should be carried out upon him according to the degree of his offense.)

If it is said: He was thrown into the sea because the boat had stopped and reached the brink of destruction, then they said: 'This is the result of something that has happened among us, so look

within yourselves.' When no specific person could be found, they resorted to a lottery as a means of resolving the problem. When his name came up repeatedly in the lottery, it became known that there was no way other than to throw him; consequently, he threw himself and was certain that this was a test from his Lord and he hoped for a good outcome. For this reason, some people...

...believes that when the sea becomes turbulent and they are forced to lighten the boat, a lottery will be held among the passengers and someone will be thrown from among them to lighten the boat. This is a misconception; because throwing some people overboard does not lighten the boat, rather it applies to cargo. In this case, they shall remain patient with Allah's decree. (2)

Whoever has attributed this statement to Malik (RA) has erred; he said:
(The analysis has reached a great crisis, and that is: when the free individuals on a boat realize that it is impossible for everyone to survive and the saving of some of them is certain, then the Khorasani Hanafis have attributed...)

(1) Al-Mustasfa 1/421.
(2) Ahkamul Qur'an, Ibn al-Arabi 4/38.

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The Shafi'is attribute this view to Imam Malik that it is obligatory to destroy a portion of the Ummah for the sake of public interest; whereas he is completely free from this notion. They only heard his statement considering public interest (Maslahah) and took it to this level according to their assumptions. However, the high status of knowledge and wisdom, the breadth of preservation, and the sharpness of understanding demanded that they perceive his intent

regarding Maslahah and direct the matter into its proper channel and stop where its limit ends. There is no disagreement among the Ummah on this issue that they will remain patient with Allah's decree until His command is implemented upon them (1).

He further says:

(Malik never said this nor did any of his companions. However, the matter is that when people heard that Malik speaks of Maslahah or public interest, they imposed the matter upon him in this way, which is not applicable to him at all. Only wealth can be thrown from a ship to save lives. But throwing a human to save lives is not Sharia-compliant; one life cannot be saved with another life. For this reason, we have said: when a person is forced (to kill someone), his duty is to remain patient in the face of danger; he shall not free himself in exchange for killing another endangered person) (2).

Izz bin Abdus Salam says:

(If the sea becomes so turbulent that the passengers of the ship realize for certain that they will not escape unless the ship is lightened by drowning half the passengers, even then it is not permissible to throw any of them into the sea, whether by lottery or without a lottery. Because they are all equal regarding the security of life. And killing an innocent person is forbidden. However, if there are goods or any respected (Muhtaram) animals on the ship, then it will be obligatory to throw the goods and then the respected animals. Because the loss from the destruction of goods and respected animals is much lighter than the loss of human life) (3).

Footnotes:

(1) Al-Qabas 3/460.

(2) Ash-Shamma quoted this from Ibn al-Arabi's 'Kitabul Intishfa', see: Mataliut Tamam 147.

(3) Al-Qawa'id al-Kubra 1/134, see also: Mughni al-Muhtaj 5/353.

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Ibn al-Qayyim says:

(Regarding the issue of the sea becoming turbulent: It is not permissible to throw any of them into the sea through a lottery or any other means; because all are equal in the preservation of life. It is not permissible to kill an innocent person to save one's own life, and one is not more entitled to it than the other) (1).

Ibn al-Hajib says:

(When there is fear of the boat sinking, it is permissible to throw away everything except people if it provides hope of saving it, whether with their permission or without it) (2).

‘Ash-Shamma’ cited many statements from the esteemed scholars on this subject, and then reached this conclusion:

(There is no provision in Sharia to kill a single Muslim to save the lives of one or more Muslims; even if they are greater in number, their interests will not be prioritized) (3).

The Malikis have narrated an opinion from the jurist Al-Lakhmi that he considers this permissible in such a case, but they have criticized it. ‘Ash-Shamma’ discussed this and mentioned that Al-Lakhmi did not give a definitive ruling on the matter; rather, he said 'I hope,' and did not express firm conviction. He primarily stated this in the context of an enemy targeting a Muslim army where they are forced to save their lives; there is no complexity regarding killing in the case of defensive warfare. This is a singular opinion of Al-Lakhmi, which the researchers have rejected (4).

Al-Bannani says:

(When Al-Lakhmi mentioned that when a boat is overloaded with people and there is fear of it sinking, a lottery will be conducted to decide who should be thrown overboard; in this case, men, women, slaves, and dhimmis are all equal, he says...)

(1) Miftah Dar al-Sa'adah, 2/908.

(2) Mukhtasar Ibn al-Hajib, along with its commentary At-Tawdih, 7/212.

(3) Matali'ut Tamam, 149.

(4) See: Matali'ut Tamam, 148; and also see: At-Tawdih fi Sharh Mukhtasar Ibn al-Hajib, 7/212; Al-Mukhtasar al-Fiqhi, Ibn Arafah, 3/38; Jawabul Arabi al-Fasi, 112.

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Ibn Arafa followed him: several scholars have reviewed the issue, as narrated by Al-Lakhmi, of throwing even a Dhimmi (non-Muslim citizen), let alone a Muslim, to save the lives of others. Some of them have linked this to a violation of Ijma (consensus). Again, some have said: no human being should be thrown to save the rest, even if he is a Dhimmi. (1)

Therefore, if the passengers of a vessel are certainly facing a sinking condition, it is not permissible for them according to Sharia to throw one of them into the sea for the purpose of

saving the lives of the rest (2); even if this process is carried out through a fair method like a lottery and the situation is so desperate that they have no other alternative, and a clear benefit would be achieved for them through throwing him, and the loss of life would be limited to only one person, and it is not a direct killing by them, but merely being an indirect cause of death. Despite this, you have witnessed the position of the jurists on this matter. If you keep this in mind, you will know that the distance between this jurisprudential outlook and acceptable Shari'ah Ijtihad and this erroneous statement is greater than the distance between the East and the West!

(1) Hashiyatul Bannani on Sharh al-Zarqani 7/56-57.
(2) Al-Burzuli associated Al-Lakhmi's opinion with the Maliki school of thought and presented evidence in its favor in his fatwa, which Ash-Shamma' rejected, as stated on page 146 of the book 'Matali'ut Tammam'. Similarly, Ibn Arafa, in his book 'Mukhtasar' 3/39, argued in favor of Al-Lakhmi's opinion that it falls under the Sharia principle of choosing the lesser of two evils. Therefore, this opinion can be considered worthy of consideration and argument, and the purpose is not to deny it completely; rather, it is to clarify that the position of the general jurists is to reject such desperate situations, despite being close to reason and acceptability.

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Chapter Two

Contemporary Applications

The extensive changes of the present time have inspired many scholars and researchers to write books and engage in intellectual pursuits on various subjects, one of the most prominent being 'Siyasah Shari'yah' (Sharia-compliant politics). The emphasis on this field has increased so much that extensive research and theoretical work have been completed, independent institutional departments have been allocated for it, and various conferences and seminars have been held. These have included many areas of contemporary emerging problems (Nawazil) and

jurisprudential issues associated with this discipline. This effort as a whole is commendable and it is a positive and [responsive stance] toward contemporary influences and...

Excellent response. Although there are differences in following the boundaries of the outcomes, objectives, theoretical firmness, and reliable jurisprudential perspectives of these academic works.

The subject matter of contemporary applications of *Siyasah Shari'iyyah* is extremely broad. For this reason, we will select some applications as examples of what the jurisprudential perspective of *Siyasah Shari'iyyah* should be. We will not review the various opinions, evidence, and detailed discussions mentioned regarding these applications, as those can be found in sufficient research papers on the subject. Instead, we will remain limited to unveiling the boundaries of acceptable research in the field of *Siyasah Shari'iyyah* for each issue (Mas'alah). The objective here is not to describe the *rajih* (stronger) or preferred opinion, but rather to depict a final regulatory framework for them.

- Closing shops for the performance of obligatory prayers:

The legal obligation to suspend commercial activities during prayer time is related to the rulings of the said prayer. It essentially revolves around two conditions:

Firstly: The Friday (Jumu'ah) prayer, which is obligatory according to the consensus (Ijma) of

Muslims (1). Therefore, based on the irrefutable evidence of the Holy Quran, it is mandatory (Wajib) for those upon whom Friday prayer is obligatory to cease buying and selling after the second call to prayer (adhan) for Friday. Almighty Allah says: "O you who have believed, when [the adhan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade." [Surah Al-Jumu'ah: 9]. Therefore, buying and selling are prohibited during this time; although there are differences of opinion among jurists regarding its validity or invalidity (the annulment of the contract), they agree that buying and selling during this time is among the forbidden (Haram) acts that must be avoided. Therefore, compelling the closure of shops at this time is essentially equivalent to commanding the performance of an obligatory duty and preventing a forbidden act.

Secondly: Other obligatory prayers. Some administrative systems—such as in the Kingdom of Saudi Arabia—have imposed obligations regarding the closure of business establishments for the performance of prayers. What is the Shari'ah ruling on this decision?

Some people assume that keeping these shops closed depends solely on the necessity of performing prayers in congregation (Jama'ah). This very notion incites them to oppose it. They argue that the issue of congregational prayer being mandatory is a matter of disagreement among jurists. Or that the prayer time is long, so there is no justification for compelling people at the very beginning of the prayer time. Or that it is possible to establish the congregation without making it mandatory to go to the mosque.

But the matter is not actually like that; the necessity here is not from the perspective of the primary rulings of Shari'ah (Asl al-Shara'). That is, it will not be said that: as soon as the adhan is heard, it becomes independently mandatory for every Muslim to stop buying and selling. Rather, it falls under 'Siyasah Shari'iyyah' (Shari'ah-based administrative policy). This is a decision taken for the purpose of achieving a greater good in protecting the people's Deen or religion; such as establishing the practice of congregational prayer, encouraging people towards it, and protecting the rights of workers so that they can perform prayers with other Muslims.

And this is an acceptable public interest policy. For a Shari'ah administrative policy, it is not a condition that it must only achieve worldly benefit; rather, achieving religious or spiritual benefit is even more noble and prestigious. Therefore, the obligation here is this Shari'i...

It has become inevitable due to administrative policy, and not merely because congregational prayer is obligatory.

(1) For the narration of consensus (Ijma), see: Al-Ishraf by Ibn Munzir 2/84, Maratibul Ijma 33, Al-Bayan fi Mazhabish Shafi'i 2/542, Al-Mughni by Ibn Qudama 2/218, Majmu'ul Fatawa 21/339.

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Therefore, there is no point in raising objections by offering excuses such as disagreements regarding the congregation or that the time is ample; because it is part of the general Sharia management that must be adhered to.

For this reason, if there is a change in the decision or if no such decision exists in a country, the duty of a Muslim is to perform prayer with the congregation, whether he does so in a mosque or with an easily available group of people. And if it is not possible for him due to work commitments, then Allah does not burden any soul beyond its capacity; in such a situation, he will perform the prayer alone within its time. However, it is necessary to ensure that the prevalence of this situation in Muslim society is in no way appropriate. This is because it is obligatory to encourage people to observe the rule of the congregation, to advise one another regarding its establishment, and to admonish those who show laxity in this regard. Furthermore, an individual's

situation should not be so constrained that he is unable to perform prayer in congregation at all.

Regarding the stay of a woman with her disbelieving husband after accepting Islam:

One of the contemporary problems concerning new Muslim women is that a woman accepts Islam or wishes to accept Islam but fears leaving her disbelieving husband. Perhaps there are children from that husband, and as a result, the matter becomes a reason for turning her away from Islam or for her abandoning Islam. This issue is considered a complex problem among Muslims living in non-Muslim countries.

This has prompted some contemporary researchers to give the opinion that when a woman accepts Islam, it is legally permissible for her to stay continuously with her disbelieving husband, including marital life and enjoyment. In this regard, they rely on the opinion of some jurists where it is stated that the marriage bond between a Muslim woman and her disbelieving husband remains intact even after a long period of time. They believe this is also of that nature and is less harmful compared to the harm of that woman abandoning Islam. Consequently, for the sake of public interest (Maslahah), they consider it correct to issue a fatwa of its validity as 'Siyasah Shar'iyyah'.

We agree that this is a problematic issue and a harsh reality that demands looking at Maslahah or public interest in a wise manner for proper conduct. However, this does not allow for completely changing the Sharia ruling so that a Muslim woman's stay with her disbelieving husband is considered correct under the primary Sharia ruling. This is because it is a false imposition on Sharia, conflicts with definitive matters (Qat'iyyat), and is contrary to the consensus (Ijma) of Muslims.

The core issue of disagreement among the jurists (Fuqaha) pertains to the suspension of the marriage contract; whereby the matter remains at the discretion of the Muslim wife, and she can wait until her husband accepts Islam, even if a long period of time elapses (1). This is contrary to the opinion of the majority of jurists (Jamhur), who determine a specific time that does not exceed the Iddat or waiting period (2).

While there are differences of opinion regarding the continuation or annulment of the contract, the husband shall not cohabit with her nor shall she remain with him as a wife. This is because this opinion conflicts with such unequivocal evidence that establishes a Muslim woman is forbidden to a disbeliever. For instance, the words of Allah the Almighty: **"They are not lawful for them [the disbelievers], nor are they [the disbelievers] lawful for them"** [Surah Al-Mumtahina: 10]. This is not a newly invented claim made by any jurist of Islam. Rather, they have described a definitive consensus (Ijma) on this matter, stating that no disbelieving person can marry a Muslim woman; and this is a well-known subject that is unclear to no one.

Imam Shafi'i states: **"Allah the Almighty has forbidden believing women to disbelievers; He has not made them lawful for them under any circumstances, and there is no disagreement among the scholars on this matter"** (3).

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(1) This opinion has been narrated from Umar, Ali bin Abi Talib, An-Nakha'i, and Ash-Sha'bi. Hammad also stated this. See: Al-Istidhkar 5/525, Fath al-Bari 9/423. This is the preferred view of Ibn Taymiyyah and Ibn al-Qayyim. However, some jurists have mentioned this view as being contrary to the consensus (Ijma), stating that she cannot return to her husband after the completion of the Iddat. See: Ahkam al-Quran, Al-Jassas 3/587, Al-Istidhkar 5/521, Al-Mughni 7/533.

(2) If a woman accepts Islam while under the authority of a disbelieving husband, or if a husband accepts Islam while having a non-scriptural (polytheist) wife, then according to the Shafi'i and Hanbali schools, they are separated immediately if it occurs before consummation. If it occurs after consummation, the matter remains suspended until the completion of the Iddat. According to the Maliki school, whether it occurs before or after consummation, one must wait until the completion of the Iddat; however, the condition is that if the husband accepts Islam first, then the wife's conversion to Islam must not be delayed too long after him—there is a detailed discussion among them on this matter. In a narration from Ahmad, it is stated that the separation occurs immediately. According to the Hanafis, if one of the spouses accepts Islam, the other is invited to Islam; if they refuse, they are separated. If they are not in Dar al-Islam, one must wait until the completion of the Iddat. See: Fath al-Qadir, Ibn al-Humam 3/419, Al-Bahr al-Ra'iq 3/228, Al-Sharh al-Kabir li al-Dardir 2/268, Sharh Mukhtasar Khalil li al-Kharshi 3/227, Al-Hawi al-Kabir 9/258, Asni al-Matalib 3/165, Al-Mughni 7/152-153, Al-Insaf 8/212-213.

(3) Al-Umm 6/397. In this matter, Imam Shafi'i has repeatedly mentioned the consensus (Ijma). See: Al-Umm 6/155, 6/385, 6/386, 6/408 and see: Al-Umm 6/15.

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For example, Ibn Adil narrated the consensus (Ijma) of the scholars that, **"It is not permissible for a Muslim woman to be the wife of a disbeliever (kaafir)"** (1).

Someone might say: this applies to the initiation of a marriage, not to maintaining (permanence

of) the marital relationship.

The answer to this is: they have also described matters that remove this doubt, which is: a disbeliever can never have sexual relations with any Muslim woman.

Ibn Atiyyah said: **"The Ummah has agreed on this matter that no polytheist (mushrik) can have sexual relations with any believing woman in any way; because this involves the humiliation of Islam"** (2).

Therefore, distinguishing between permanence and initiation here is a futile argument. Because the evidences (texts) include both initiation and permanence. The reason for the prohibition present at the beginning of the marriage is also fully present in the case of its continuation; and that is the harm resulting from this marriage and the superiority of the disbeliever over the Muslim woman. Therefore, there is nothing regarding permanence that would relax the ruling or make it different.

And this jurisprudential (fiqhi) principle—**"Certain things are pardoned regarding permanence that are not pardoned regarding initiation"** or **"Permanence is easier than initiation"** (3)—is related to specific minor details that are proven incidentally and where leniency is shown. Permanence differs from the ruling of initiation and permission is granted in that case only when the state of permanence is lighter or easier than the state of initiation.

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(1) At-Tamhid 12/21; further Ijma has been narrated by: Ibn al-Mundhir in 'Al-Awsat' 5/181, Al-Jassas in 'Ahkam al-Qur'an' 3/346, Al-Mawardi in 'Al-Hawi al-Kabir' 9/101, Al-Baghawi in his Tafsir 1/256, Ar-Razi in 'At-Tafsir al-Kabir' 6/413, Ibn Abi Umar Ibn Qudamah in 'Ash-Sharh al-Kabir' 7/507, Ibn Taymiyyah in 'Majmu' al-Fatawa' 32/36, Ibn al-Qayyim in 'Ilam al-Muwaqqi'in' 2/254, Ibn Juzayy in 'Al-Qawanin al-Fiqhiyyah' 131 and 'At-Tashil li-Ulum at-Tanzil' 1/286, and Al-Ayni in 'Umdat al-Qari' 20/83.

(2) Al-Muharrar al-Wajiz 1/297; see also: Ash-Sharh al-Kabir, Ibn Abi Umar 21/30; Ahkam al-Qur'an,

Ibn al-Faras 1/288; Al-Jami' li-Ahkam al-Qur'an 3/72; Al-Bahr al-Muhit, Abu Hayyan 2/419; Fath al-Bari 9/132.

(3) See: Durar al-Hukkam Sharh Majallat al-Ahkam 1/56.

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If an exemption is granted regarding a matter due to its initial or starting condition, it does not mean that every continuation is the same as the starting condition. Therefore, it cannot be said that the presence of stolen property with a thief is not like the start of the theft in terms of being forbidden and in the requirement for compensation. Or that continuing to drink wine is not like the act of starting to drink it; the same applies to other prohibitions. Thus, a Muslim woman is not lawful for a disbeliever, whether at the start of the marriage or in its continuation. There is no inherent meaning in the continuity that demands a change to the ruling established at the beginning.

For this reason, those among the jurists who have spoken about the continuation of the contract have mentioned that the continuation of the contract without a time constraint does not make marital cohabitation lawful. Even the general jurists who specify a certain time (such as the 'Iddah period) have forbidden enjoyment (physical relations) during this time.

This is an established matter in jurisprudential research. Al-Baji clarifies this established matter by saying: **(The Messenger of Allah (peace be upon him) did not separate Safwan bin Umayyah and his wife until he accepted Islam; this means he did not annul the marriage. And the separation**

through the cessation of physical relations is certain, although the narrator did not mention it in his Hadith).

Ibn al-Qayyim explains that this is a waiting period for the marriage which is necessarily known: **(It is known with certainty that he only gave her the choice to wait until his acceptance of Islam—consequently, she would be considered his wife as before—or she would leave him).**

Therefore, the claim that enjoyment (physical relations) is lawful and that the marital relationship remains intact as before is contrary to the clear explanation of the Quran and the consensus of Muslims. Rather, they have suspended or deferred the contract, which is not annulled by the passage of a specific time like the 'Iddah; instead, whenever the husband accepts Islam and if the wife wishes to return to him, she will have that right.

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(1) See: Al-Muhalla 5/370-372.
(2) See: Ahkamu Ahlil Milal 189 & 191 and 437-438, Zadul Musafir 2/334, Al-Bahrur Raiq 3/228, Ash-Sharhul Kabir, Lit-Dardir 2/268.
(3) Al-Muntaqa Sharhul Muwatta 3/343.
(4) Zadul Ma'ad 5/127.

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Ibn Taymiyyah says: (If a slave of a Dhimmi disbeliever accepts Islam, his ownership is not lost from him; rather, he will be ordered to relinquish his ownership and he will be prevented from exercising authority over him. Additionally, he will be prevented from enjoying his female slaves—whether she is an Umm al-Walad or anyone else—and from putting them to work. Similarly, when a woman accepts Islam, a barrier is created between her and her husband...

...is done. If the husband embraces Islam before the rights of others are involved, he will be like someone who embraced Islam before his slave was sold; in that case, he is more entitled to them. (And remaining [in the marriage] is stronger than starting [it anew].) (1)

Ibn al-Qayyim says: (This does not mean that while the husband remains a Christian, she will stay under his authority; rather, she will wait and observe the 'iddah [waiting period]. Then, whenever the husband embraces Islam, she will be considered his wife, even if several years have passed.) (2)

Due to the repulsiveness of the form of full approval, you will see that those who advocate for maintaining the marriage bond emphasize its futility and the importance of freeing their doctrine from it:

(Furthermore, permitting the maintenance of the marriage bond purely without providing the opportunity for sexual intercourse is a matter of pure benefit and harmless welfare (maslahah) without any obligation. This is because the cause of harm can be either the initiation of authority of a disbeliever over a Muslim woman—which is in no way permissible, just as initiating a marriage between a Muslim woman and a disbeliever is not permissible even if there is no intercourse; or establishing authority over her through slavery, which is not permissible. Or, having intercourse with her after the wife has embraced Islam—which is not permissible. Therefore, in permitting the maintenance of the marriage bond, there is leading benefit for the husband and wife in matters of religion and the world, without any kind of harm. And when the matter is such, Sharia does not bring a ruling to forbid it.) (3)

Therefore, the maximum possible evidence in this matter can only be regarding the maintenance

of the marriage bond; but it is not possible to attribute (relate) the matter of maintaining it with the opportunity for sexual enjoyment to any jurist (faqih) of Islam.

(1) Majmu' al-Fatawa 32/338.

(2) Ahkam Ahl al-Dhimmah 2/646, and see similar: 2/648.

(3) Ahkam Ahl al-Dhimmah 2/695.

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This is a self-evident ruling among the jurists and the practice of the entire history of Muslims. Even some jurists have described it as inconceivable. Ibn al-Arabi says: "We do not decide on the validity of a disbeliever's 'ila' [oath to abstain from the wife]; because either his wife will be a Muslim—and this is something whose existence is impossible and no fatwa applies to it—or the wife will be a disbeliever, and in that case we have nothing to do with them." (1)

Therefore, the legality of a woman remaining under her disbelieving husband as before cannot be included within 'Sharia-based governance' (Siyasat al-Shar'iyyah). And welfare-oriented ijtihad cannot make it legal either. This is because it is a change of an established Sharia ruling and an ijtihad in opposition to a definitive proof (nass), which has no acceptability. In the field of Sharia-based governance, legal ijtihad is a middle path that considers public welfare while maintaining Sharia boundaries.

Then, what could be the position of Sharia-based governance in this practical situation?

The position that governance can adopt is to deal with it according to the jurisprudence (fiqh) of 'necessity' (darurat) or need. Therefore, if it is certain that as a result of declaring the Sharia ruling, she will leave Islam, then refraining from clarifying the ruling to her...

Staying may be permissible. This will be delayed until Islam becomes firmly rooted in her heart and her mind becomes open to accepting the commands of her Lord—even if it is contrary to her inclinations and she feels hardship in it. For the purpose of preserving her religion and preventing apostasy (becoming an apostate), she may strategically be told to remain under her husband's authority; however, this is without establishing it as permissible in the original Sharia provision.

This is a beneficial ijtihad within Sharia boundaries, which considers 'necessity' or special requirements. That is, it considers the matter of preserving her religion and removing her aversion to Islam, but within the limits of Sharia acceptability.

However, moving towards changing the regulations for the sake of this necessity is a type of false attribution to the Sharia. It does not actually ensure public welfare. This is because it provides encouragement to violate these forbidden acts. And the Sharia has prohibited it only because of its harm or the preponderance of loss. For this reason, staying with her disbelieving husband to preserve the wife's religion is not always beneficial. Rather, sometimes—and perhaps this applies in most cases—the preservation of her religion is achieved by severing her marital relationship, and staying with him becomes the cause of her apostasy.

(1) Al-Qabas fi Sharh al-Muwatta Ibn Anas 3/907

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- Determining the minimum age for marriage:

One of the problematic issues of our current age is the matter regarding the determination of a minimum age for marriage. The objective is to protect the rights of minor girls so that they are not

given in marriage to unsuitable partners or without any benefit (maslahat). However, besides this benefit or public welfare, other matters are also influencing this issue, such as pressure from international organizations and human rights groups; who do not accept the marriage of individuals aged eighteen or near that, because according to them, it is below intellectual maturity (rushd).

Then, is it Sharia-compliant to enact legislation prohibiting marriage below this age?

Here, to verify the scope of benefit-based ijtihad, we must clarify those Sharia boundaries that influence this perspective. This is so that the ruling of this ijtihad can be evaluated and analyzed, and how it can be protected from violating Sharia boundaries can be observed.

Sharia limits are contained within two matters:

First matter: The Lawgiver has made marriage permissible at this age. This is the opinion of the majority of jurists. Many of them have mentioned consensus (ijma) on the marriage of minors without determining any specific age. (1) Therefore, prohibiting it is another name for making what Allah has made permissible (halal) into forbidden (haram). (2)

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(1) Al-Qadi Ismail 'At-Tamhid' (19/84), Al-Qushayri 'Ahkam al-Quran' (6/76), Ibn al-Munzir 'Al-Ishraf' (5/19), Al-Jassas 'Ahkam al-Quran' (2/68), Ibn Abd al-Barr 'At-Tamhid' (9/98), Ibn Battal 'Sharh Sahih al-Bukhari' (7/172), Ibn al-Arabi 'Ahkam al-Quran' (3/506), Ibn Rushd 'Bidayat al-Mujtahid' (3/34), Al-Umrani.

'Al-Bayan' (9/178), Ibn Qudama's 'Al-Mughni' (7/40), and An-Nawawi's 'Sharh Muslim' (9/206) have recorded a consensus (ijma) on behalf of a large group of jurists.

(2) It has been narrated from some jurists like Ibn Shubrumah that reaching puberty is a condition for marriage. See: 'Mukhtasar Ikhtilaf al-Fuqaha' (2/257), 'Al-Muhalla' (9/38), as it has also been narrated from Abu Dawud. See further: Al-Qushayri's 'Ahkam al-Quran' (3/76) and Usman al-Batti; 'Bada'i al-Sana'i' (2/240). However, this does not pose a conflict here, because the age limit mentioned here is not related to reaching puberty. On the other hand, this is an isolated juristic report contrary to the statements of the majority of the scholars of the Ummah. Yet, the reliable view is that of the majority of the Ummah and the four schools of thought (Madhabs), which is the practiced opinion.

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Second Subject: The Legislator of Shariah has linked the rulings of marriage to their causes. Consequently, when a marriage takes place, its results—such as maintenance, the waiting period (iddah), inheritance, and other matters—follow. Therefore, preventing the effectiveness of these causes would be considered a transgression against the rulings established by Shariah.

If we understand these two matters, the second aspect is very strict. Therefore, it is not possible to determine a fixed age limit for marriage in the sense that if a person marries below that specific age, their marriage will not be acceptable and its results will not be effective—this is not valid according to 'Siyasah Shari'ah' (legal policy). This is because these results are rulings established by the Legislator (Ahkam Wad'iyyah), which it is not permissible to render ineffective.

On the other hand, regarding the first aspect, it will not render the results of the marriage ineffective, but it will (in specific circumstances) impose a prohibition and punish anyone who

violates it.

The ruling in this regard is that this falls under 'Taqyeed al-Mubah' (restricting the permissible). Restricting any permissible matter is only valid when a general public interest (Maslaha) recognized by Shariah exists that demands such a restriction. Furthermore, this restriction must be followed only according to necessity, and there should be no excess in it.

Therefore, it is necessary to first determine the existence of necessity and public interest. When this necessity and public interest are proven, it will then be valid to limit it according to the need without any excess.

In such a situation, there is no need for a blanket ban; rather, the matter of the marriage of minors can be entrusted to a judge (Qazi). That is, the guardian will not marry them off directly; instead, when they wish to marry them off, they will present the matter to the judge, and the judge will ensure the interests or welfare of that minor and the fulfillment of the full rights of the woman. Then he will perform the marriage. Therefore, this will be limited solely for the sake of ensuring the welfare of the girl. In this regard, there is a valid scope in Siyasah Shari'ah.

Along with this, it is also important to make the process of marriage through the judge easier, so that it becomes easy to ensure the welfare of the woman. This is the aspect of public interest that demands administrative intervention. However, no additional strictness should be applied that would make its processes so complex that it results in something like a blanket ban.

...man. A consensus (Ijma) has been reported on this matter. It has been mentioned previously that it is not right for an Imam or ruler to compel people towards a single acceptable Fiqhi opinion

without any reliable public interest. Then what would be the case for an opinion that is in such a state (i.e., weak), and against which a consensus has been reported? Therefore, the highest level is that it may be permissible to issue a fatwa or act according to it; but it cannot be imposed on people in such a way that they are prevented from adopting other opinions. However, the matter of restricting a permissible (mubah) act is different, which will be discussed ahead. Thus, the existence of this difference of opinion does not affect the presentation of the issue.

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- Judicial Hierarchy:

The objective of this is for the judicial process to be conducted in two or three stages. Therefore, no verdict will attain finality until all stages are completed. This is a common method in most modern judicial systems, aimed at ensuring justice and minimizing errors. Since the possibility of error exists, a judicial hierarchy reduces it.

Contrary to this modern welfare-oriented perspective, no explicit scriptural evidence (nass) is found in Sharia. This falls within the permissible (mubah) sphere where public interest or maslahah is operative. This form was not prevalent in the past judicial history of Muslims, but this does not diminish its acceptability. Such a matter cannot be taken as a basis for proving something prohibited (haram) or disliked (makruh), as it is part of legitimate administrative management. Since the judge is a representative of the Imam or the head of state, just as full judicial authority can be delegated to him, he can also be restricted by imposing the condition that his verdict must be reviewed by multiple individuals. All these are procedural matters that follow the principle of public interest (maslahah).

Therefore, a welfare-oriented perspective here is one of the broad fields of Ijtihad, as it occupies a position where there is no explicit scriptural evidence (nass).

- Judicial Codification of Rulings:

Among contemporary issues related to Siyasa Shar'iyyah (Sharia-based governance) is the provision for the judicial codification (taqnin) of Fiqhi rulings. The reason is that, according to principle, a judge relies on his own derived or preferred (tarjih) opinion or a specific school of thought (madhhab) in his judgment. However, in our era, a new form of codification has emerged, which arranges Fiqhi rulings into such detailed articles that the judge has no room to deviate from them.

Contemporary scholars are divided into two streams regarding the provision of codification:

First stream: Permissibility. Their argument is based on the consideration of public interest (maslahah).

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Second Stream: Prohibition. Their argument in favor of prohibition is established upon evidence based on nass (Sharia texts) and maslahah (public interest).

When we confirm the existence of a Sharia nass in this regard, there is no longer any room for Siyasah Shari’iyyah (Sharia-based politics). For this reason, it is essential to examine this argument while reviewing this matter; because maslahah-based political ijtihad depends on it.

The basis of presenting an argument through nass in favor of prohibition is that Allah, the Lawgiver, has commanded to judge according to what He has revealed. This makes it mandatory

for the judge to decide based on what he believes to be true. Therefore, if any jurisprudential opinion is imposed on him that he does not believe to be correct or that he considers invalid, it would be contrary to judging according to Sharia.

However, this argument can be reviewed from two perspectives:

First: This rule relates to mujtahids, who possess the competence to apply their own judgment and preference (tarjih) in subtle jurisprudential matters. This is not always present in judicial proceedings. Therefore, a judge's following of a scholar's opinion or an Imam's madhhab (school of thought) is not a judgment that deviates from the truth.

Those who do not make being a mujtahid a condition for a judge—such as the Hanafıs—have mentioned that a judge's decision based on another's fatwa is included in judging on the basis of ilm (knowledge). Because knowledge is not only that which is definitively correct, but also that which creates a strong presumption of being correct; and that is present here. (1)

Second: Compelling someone to follow an acceptable ijtihadi opinion and judging according to that acceptable opinion is not contrary to Sharia, especially if a predominant maslahah or public benefit is achieved through it.

Some jurists have explicitly mentioned that if a muqallid judge decides according to the well-known opinion of his madhhab, it will be reliable, even if it is not rajeh (preferable) or predominant in his own view. (2)

Therefore, the matter maintains the possibility of Siyasah Shari’iyyah if it ensures maslahah or public welfare. For this reason, both sides have disagreed about the benefits and harms of the codification (taqnin) of law; because both sides are following the path of Siyasah Shari’iyyah.

(1) See: Fath al-Qadir, Ibn al-Humam 7/256.
(2) See: Al-Ihkam fı Tamyiz al-Fatawa 'an al-Ahkam 92, Tabsira al-Hukkam 1/26.

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According to him, those who oppose codification (Taqnin) decide to prohibit it based on a public interest (Maslahah) perspective. They believe that codification inherently contains harm (Mafsadah). Conversely, those who consider it permissible favor applying 'Siyasa Shar'iyyah' (Sharia-compliant governance) in adopting codification, as it serves the public interest and removes harm. Therefore, it is a valid field for Ijtihad. The benefits or disadvantages of codification may become more pronounced at a specific time or place, which aids in its adoption.

- Financial Compensation for Arbitrary Divorce:

This means that if a husband divorces his wife without any reason, he is obligated to pay financial compensation based on the harm caused to the wife due to the abuse of the power of divorce.

The primary ruling regarding divorce is that no financial rights shall be imposed beyond the rights prescribed by Sharia—such as maintenance and Mut'ah (a consolatory gift). Forcing the husband to provide anything beyond this is considered an unjust seizure of his property; and since this is a field where a definitive text (Nass) exists, there is no scope for Ijtihad.

However, this view does not validate receiving money for every divorce; rather, it considers that this scenario relates to an issue not covered by the original textual evidence. This pertains to a type of divorce that Sharia dislikes and which does not fulfill the objectives and purposes of Sharia. It leads to many harms and injuries that Sharia does not intend. As a result, the woman suffers financially and mentally. Consequently, harm is inflicted, and harm must be eliminated.

Therefore, a husband divorcing in this manner is essentially an abuse of rights. Thus, for this harm, the husband shall be compelled to pay compensation to his wife, and this falls under judicial financial penalties. (1)

Thus, this is a specific aspect of the review that moves this scenario away from the primary scope of the textual evidence. However, there are some objections to it:

1- Arbitrary divorce has existed since ancient times, yet Muslims did not impose any financial compensation for it. Therefore, it is not a specific new issue (Nazilah) of our era that demands Ijtihad based on considerations of a specific public interest.

(1) See: As-Siyasa al-Shar'iyyah fi al-Ahwal al-Shakhsiyyah, pp. 178-185.

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Everything that has been mentioned regarding the ruling of this divorce and the harm resulting from it was present throughout all eras of Islam since the time of the Sahaba (Companions) of the Prophet (peace and blessings be upon him). But they did not impose any financial compensation for this, nor does any reason exist that warrants a change in this ruling.

2- In the case of divorce, the husband has exercised his Shari'ah right to separate from his wife. No person is punished for performing an act that is *mubah* (permissible) according to Shari'ah (1). It is not possible to say with certainty about the reason for the husband's divorce—whether he intended to cause harm or do something unjust. Therefore, even if there is no reason other than

his own inner will, it would still not be lawful to punish him financially for it.

3- 'Arbitrary divorce' is an undefined concept. Therefore, what is the criteria for an arbitrary divorce that makes a financial penalty mandatory? Does it refer to every divorce without a cause? And what is the criteria for such a rational cause? Or is it every divorce that results in harm? And what is the threshold for that harm?

Because the fundamental principle in the case of divorce is that there is no financial compensation. When divorce is linked to being 'arbitrary,' then this act must be well-defined, so that its special nature becomes clear, which justifies separating it from the ruling of the general *nass* (textual) evidence. If this concept is applied indiscriminately, most divorces occurring among people would become compensable. Consequently, the scope of compensation would become so wide that it would effectively restrict the Shari'ah principle itself. Then it would not be some exceptional partial form of a principle; rather, it would become the principle or general rule itself. As a result, the situation would become such that matters of divorce and its related issues, which were not financially compensable according to Shari'ah principles, would in practice make the provision of financial compensation mandatory except in exceptional cases.

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(1) According to the Maliki school and some Hanafi jurists, it is *mubah*. In the Shafi'i and Hanbali schools, it is *mubah*, but *makruh* (disliked) without necessity. According to one narration of the Hanafi school and the Hanbali school, it is *haram* (forbidden) without necessity. 'Necessity' includes a lack of attraction towards the wife. See: Fathul Qadir, Ibn Humam 3/465; Hashiyat Ibn Abidin 3/228; Majma'ul Anhur 1/380; Al-Bahrur Ra'iq 3/254; Al-Kafi, Ibn Abdil Barr 2/571; Al-Fawakih ad-Dawani 2/31; Hashiyat ad-Dasuqi 2/361; Rawdatut Talibin 3/8; Mughnil Muhtaj 4/497; Al-Mughni 7/363; Kashshaful Qina 5/232.

4- These mentioned harms are inextricably linked with divorce, whether it is done arbitrarily or

otherwise. In this, the harm falls on both the husband and the wife, so the harm is not specific only to the woman; rather, the husband also becomes a victim of it. Therefore, punishing the husband with a financial penalty is equivalent to taking his wealth unjustly. Here, it would not be correct to give priority only to the aspect of compassion and mercy towards the woman; because the husband can be even more harmed and needy than the wife. Therefore, the demand for justice is to look at the condition of both husband and wife, so that money is not taken unjustly from anyone.

The problems mentioned that divorced women face are included in important social needs, which must be fulfilled through other Shari'ah means. For example: direct assistance from the state, or through charity (*sadaqah*), Zakat funds, and public welfare work.

...etc. This cannot be done by unfairly imposing financial fines. Similarly, a condition can be set to increase the bride's dower (Mahr), which will be payable at a later date (Mu'ajjal) and will take effect in cases where divorce is granted without any reason.

5. The fundamental principle is that a Muslim's wealth is inviolable. Therefore, there is no scope to validate it by treating it as a judicial financial penalty. This is because Shariah evidence is mandatory for such penalties, and divorce is not a valid reason for it. Divorce is a legitimate way to end a marital relationship; even if it is done through neglect, laxity, or arbitrariness, the mental and financial consequences it has on the husband—such as separation from his wife and being detached from his children—are much more difficult for him than financial compensation. Therefore, there is no need to impose preventive penalties to prevent neglect in divorce.

Thus, it appears that according to 'Siyasa Shar'iyyah' (Shariah administrative policy), this

compensation is not acceptable. However, if the matter is linked to a specific judicial review of a divorce, which results in a specific loss to the wife, and there is circumstantial evidence and conditions proving that the husband caused this loss for some reason other than the mere act of divorce, then there may be scope for it.

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- Separation of Powers:

One of the foundations of contemporary political systems is the so-called 'separation of powers.' Its purpose is to ensure that power is not concentrated in a single hand; instead, it is divided into several centers: the executive branch, the legislative branch, and the judicial branch. These are collectively independent of each other, yet coordination and cooperation exist between them. However, each department has certain specific powers in which other departments do not participate.

There is a disagreement among contemporary scholars regarding whether this modern concept existed in the political system of the early era of Islam.

Some say it was present and that Muslims followed this principle of separation long before contemporary political systems. They present strong historical evidence in support of this.

Others argue that it was not present; it is a newly invented concept of our age. Based on this, they consider it prohibited and believe it to be contrary to Islam.

The correct view lies somewhere between these two groups. This separation did not exist during the time of the Prophet (PBUH), his Caliphs, or those who followed. Although these functions or departments existed, there was no such separation among them, meaning they were not completely independent of the ruler's authority. However, this does not prove that the concept should be labeled as forbidden or contrary to Islam; rather, the matter should be considered in

terms of human welfare and necessity. If it is more beneficial for the people, then there is no reason to prohibit it in Shariah.

- Imposing conditions of judicial decision for divorce to be valid:

As we mentioned earlier in the discussion regarding determining the age of marriage, divorce is a ruling whose far-reaching impact...

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...exists. Therefore, it is not permissible to restrict divorce in the sense of suspending its effectiveness or its impact. No one has the right to change these Sharia boundaries by appealing to public welfare. It is not possible to nullify divorce on the pretext that people are displaying laxity in matters of divorce, or that divorce...

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...has far-reaching effects on individuals and society, and that a significant maslahah (public interest) is inherent in suspending it—such maslahah-based analysis holds no value. This is because this ruling was determined by the Lawgiver (Allah) Himself. Therefore, when it occurs, its impact and consequences must take effect. Thus, any attempt to block the path of implementing these impacts and consequences by citing maslahah is unacceptable from the perspective of 'Siyasah Shar'iyyah' (Sharia-based policy); and this is for two reasons:

First Reason: Maslahah or public interest does not have the capacity to change the boundaries of Sharia rulings. When a husband utters the word of divorce, the Sharia ruling is for it to take effect and for the related impacts to be established. Therefore, suggesting that divorce is not established based on maslahah is to oppose the 'Nass' (explicit scriptural text) and to engage in

ijtihad in the presence of a clear text, which is in no way acceptable.

Second Reason: There is no real maslahah in this. It is possible to achieve real maslahah without imposing artificial conditions on the implementation of a Sharia ruling.

Similarly, the accounts given to justify this view—regarding the laxity people show in issuing divorces and the resulting harms—have existed in Muslim history for centuries. Therefore, this is not a new phenomenon or a modern-day specific problem that demands a special review; rather, it is exactly similar to the types of situations the venerable jurists (Fuqaha) used to encounter. Thus, there is no new change required here for our present time.

However, someone might say: the issue of divorce not being effective is not based on maslahah, but rather on 'Nass' or evidence. They present evidence from the following word of Almighty Allah regarding keeping witnesses in divorce: "And take for witness two just persons from among you" [At-Talaq: 2]. This also includes divorce. A group of scholars have called it wajib (obligatory), just as other scholars have stated that divorce is not valid without it.

But this viewpoint is also unacceptable for several reasons:

First Reason: Most scholars have expressed the view that through the command to keep witnesses in the word of Almighty Allah—"And take for witness two just persons from among you"—the requirement of keeping witnesses in both divorce and raj'at (taking back the wife) has been established as 'mandub' or preferable.

And this is not obligatory (1), and some scholars have expressed the opinion that keeping witnesses in the case of 'Raj'ah' (returning the wife after divorce) is obligatory (2).

But this does not mean that they consider keeping witnesses in the case of divorce a condition, as some people mistakenly believe and attribute the opinion of keeping witnesses in divorce being obligatory to them. In reality, the difference of opinion is only regarding 'Raj'ah', not regarding divorce. For this reason, the jurists who consider keeping witnesses in 'Raj'ah' as recommended (Mustahabb), in response to those who call it obligatory, say that Allah Almighty's command: **"And take as witness two just persons from among you"** comes after **"retain them (wives) in kindness"** and **"separate from them in kindness"**. Therefore, when it was not obligatory in the case of divorce—which is the closest mention—then it being not obligatory in the case of 'Raj'ah' is more logical (3).

For this reason, Ar-Ramli (may Allah have mercy on him) presents evidence for deviating from it being obligatory, saying: "(The command of keeping witnesses) has been diverted from being obligatory by their consensus (Ijma) or unanimous agreement regarding not keeping witnesses at the time of divorce; therefore, the matter of taking [her] back will be the same" (4).

So, this means that not keeping witnesses in the case of divorce is a unanimous matter among the jurists of various schools of thought (Madhabs). For this reason, they cite this as evidence against opponents. Imam al-Jassas, in describing this consensus, says:

"(The jurists have not disagreed on the fact that the 'separation' mentioned in the verse refers to leaving her until the completion of the waiting period (Iddah). And the separation becomes valid even if no witnesses are kept for it, and witnesses are kept later. The mention of keeping witnesses is made immediately after the command for separation, yet it is not a condition for the separation to be valid; the same applies to the matter of 'Raj'ah'. And since separation was a right of his (the husband's) and it was valid to do so without any witnesses—since it does not require

the consent of anyone else—and it was...)"

(1) See: Bada’i’ al-Sana’i’ 3/181; Al-Ikhtiyar li-Ta’lil al-Mukhtar 3/148; At-Taj wal-Iklil 5/411; Sharh Mukhtasar Khalil, by al-Kharshi 4/87; Rawdat al-Talibin 8/216; Al-Hawi al-Kabir 10/319; Ash-Sharh al-Kabir, Ibn Abi Umar 8/473; Al-Insaf 9/152.

(2) This is an opinion among the Malikis and Shafi'is and a narration from the Hanbalis; see: Al-Bayan wa al-Tahsil 5/418; Al-Dhakhira 10/152; Al-Hawi al-Kabir 10/319; Al-Mughni 7/522; and see: Ahkam al-Quran by al-Baghati 324.

(3) For this evidence, see: Ahkam al-Quran by al-Tahawi 2/329; Al-Hawi al-Kabir 10/319; Ash-Sharh al-Kabir, Ibn Abi Umar 8/473.

(4) Nihayat al-Muhtaj 69/7.

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Raj'at (taking back a divorced wife) is a right of the individual; therefore, it must be valid even without witnesses.[1]

For this reason, Al-Mawardi stated: "People have reached a consensus that pronouncement of divorce is valid without witnesses."[2] Thereafter, he mentioned the existing differences of opinion regarding *raj'at*.

Prior to him, Imam Shafi'i described this consensus, saying: "What I have described—meaning I have not encountered any person of knowledge from whom the contradictory view is preserved that divorce without witnesses is prohibited (*haram*)—serves as proof that this (providing

witnesses)—and Allah knows best—is an optional matter, not a mandatory or obligatory provision such that its omission would constitute a sin or its fulfillment would be required after a specific time or place has passed. Regarding *raj'at*, the matter of providing testimony carries the same probability and meaning as in the case of divorce."[3]

Therefore, it is incorrect to attribute the opinion that testimony is mandatory for divorce to those who consider it mandatory for *raj'at*. This is because the difference of opinion concerning divorce is significantly weaker than the disagreement regarding *raj'at*, although some jurists (*fuqaha*) do hold this view.[4]

Furthermore, the conceptual difference between divorce and *raj'at* is distinct. *Raj'at* involves the restoration of the marital bond. Consequently, it is logical to impose a condition of witnesses who will prove its occurrence to make it effective. Conversely, divorce is a declaration uttered by the husband upon which Sharia rulings are based. Therefore, there is no logic in it remaining suspended until testimony is provided. This would imply that if someone pronounced divorce without witnesses, it would have no effect since no witnesses were present!

Among other distinctions: *Raj'at* is associated with a specific timeframe, after which it becomes impossible. Thus, the need for testimony arises to ensure that the timeframe has not elapsed. In contrast, divorce is not associated with time in such a manner.[5]

(1) Ahkam al-Quran 3/609.

(2) Taysir al-Bayan 4/265; Ash-Shawkani likewise first described the difference of opinion and then mentioned the *ijma* (consensus); see: Nayl al-Awtar 6/300.

(3) Al-Umm 8/191.

(4) See: Al-Muhalla 17/10, Al-Bahr al-Muhit fi al-Tafsir 10/198, At-Tahrir wa al-Tanwir 28/309.

(5) See: Ahkam al-Quran, Al-Kiya al-Harrasi 4/420.

Second Point: Even if the requirement (the matter of it being mandatory) is accepted, the final conclusion is that it is only mandatory to keep witnesses...

...indicates it as mandatory. However, this does not mean that a divorce will not be effective due to the absence of witnesses; rather, the claim of it being mandatory (Wajib) means that one will be sinful for failing to keep witnesses, and thereafter, keeping witnesses for it will be necessary. As a result, no claim regarding the divorce will be accepted without proof, but the legal effect of the divorce will not be invalidated. It is for this reason that **Ibn Hazm**—who considers witnesses to be mandatory—stated: "Regarding a woman whose husband could not present any evidence for her divorce or reconciliation (Raj'at), we consider the husband to be disobedient to Allah the Almighty if he takes a false oath while knowing that he has divorced her or performed reconciliation." Regarding the effectiveness of a divorce when no witnesses were kept, he described the consensus, saying: "We are not aware of any disagreement; rather, we establish this as a final consensus (Ijma)."

Ibn Ashur—who is inclined towards the view that keeping witnesses is mandatory—says: "Everyone agrees that keeping these witnesses is not a condition for the validity of reconciliation or separation. This is because it has been legislated only as a precaution to protect the rights of both parties and to avoid disputes; so that if the husband dies, the wife is not denied her status as a divorcee, or if the wife dies, the husband cannot make a similar claim. It seems they have stated this based on the principle that a command to perform an action does not necessarily mean it must be executed immediately. Furthermore, to establish something as a condition for another

matter requires independent evidence beyond the general evidence of it being mandatory. This is because a sin may be incurred by omitting an act, but the related primary act is not invalidated due to that omission; for example—performing prayer in usurped clothing on usurped land. Those who say keeping witnesses is mandatory state: if someone performs reconciliation but does not keep witnesses, or completes a final separation without witnesses, his reconciliation and separation will be valid, and he must provide witnesses subsequently."

Therefore, based on the view that keeping witnesses is mandatory, it is established that if a husband claims reconciliation after the waiting period (Iddah) has passed, his word will not be accepted; for he is no longer considered a trustworthy or reliable party.

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(1) Al-Muhalla 10/18.

(2) Maratibul Ijma 72.

(3) At-Tahrir wat-Tanwir 28/310.

(4) See: Al-Bayan wat-Tahsil 5/418; and see: Musannaf Abdur Razzaq 6/137-138.

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Third Point: The effectiveness of a divorce is a matter of consensus among scholars. **Ibn Taymiyyah** clarifies the misconception of some people, stating: (Some people think that keeping witnesses is the divorce itself, and they believe that if witnesses are not kept for a divorce, it is not effective. This is contrary to consensus and also contrary to the Quran and Sunnah; and none of the renowned scholars have expressed such a view)(1).

Jassas states: Apart from one narration cited from Ata, we are not aware of any disagreement among scholars regarding the validity of reconciliation (bringing back the wife) without witnesses. Sufyan ibn Jurayj narrates from Ata, and he states: divorce, marriage, and reconciliation must be based on evidence. This applies to the instruction of keeping witnesses as a precaution against the fear of denial, not in the sense that reconciliation is invalid without witnesses. Do you not see

that he mentioned the matter of divorce along with it? Yet no one harbors any doubt regarding a divorce being effective without witnesses(2).

Fourth Point: The disagreement reported from some earlier scholars is not clear regarding the imposition of witnesses as a condition for the validity of a divorce. Rather, it indicates that keeping witnesses is mandatory (Wajib) in the case of a final divorce. It becomes even clearer through this...

...When we review the names of those to whom this opinion is attributed, they are:

1- Imran ibn Husayn: Narrated from Mutarrif ibn Abdullah that Imran ibn Husayn was asked about a person who divorced his wife and then had intercourse with her, yet he had not kept witnesses for the divorce nor for the taking back (Ruj'ah). He said: (You divorced in a manner contrary to the Sunnah and took her back in a manner contrary to the Sunnah. Keep witnesses for the divorce and for taking her back, and do not repeat such a thing) (3).

This is clear regarding the validity of divorce and taking back, and for this reason, he ordered witnesses to be kept. Supporting this is the fact that keeping witnesses after taking back was a common practice among the Tabi'un. It has been narrated from many of them, such as: Sa'id ibn al-Musayyib, Hasan, Zuhri, Tawus, Nakha'i, Sha'bi, and others (4).

(1) Majmu' al-Fatawa 33/33.
(2) Ahkam al-Quran 3/610.
(3) Abu Dawood (2186), Ibn Majah (2025), Abdur Razzaq ‘Al-Musannaf’ (10255) & (10257), and Ibn Abi Shaybah ‘Al-Musannaf’ (17783) narrated this Hadith.

(4) See: Musannaf Abdur Razzaq 6/137, Musannaf Ibn Abi Shaybah 4/59-60, and Jassas's Ahkam al-Quran 3/609.

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2- Similar words can be said regarding what has been narrated from Ibn Abbas (RA); he said: "If he wishes to take her back before the end of her Iddah (waiting period), let him have two men as witnesses." (1)

3- Ibn Jurayj: Narrated from Ibn Jurayj, he said: "Marriage, divorce, and taking back are not valid without two witnesses. If someone takes back while being ignorant of the requirement for witnesses, and in that state, he meets her in seclusion and has intercourse, then once he becomes aware of the matter, he should return to the Sunnah and keep two upright persons as witnesses." (2)

This is also like the previous narration. What Ibn Jurayj narrated from the opinion of Amr ibn Shu'ayb on this matter further strengthens and details this position. He said: "The testimony of a single witness is not acceptable in matters of marriage or divorce. Therefore, if a person divorces and one witness testifies against him while he (the husband) denies it, he shall be made to swear an oath in the name of Allah that he did not divorce. If he swears, she will be considered his wife. If he refuses to swear, the divorce will take effect based on the witness's testimony; and in the case of refusing the oath, he himself is regarded as the second witness." (3)

4- 'Ata: Narrated from 'Ata (Rh.), he said: "Interaction (of the husband) with the wife will be considered as taking her back, but after becoming aware of the ruling, he should keep witnesses so that he returns to the Sunnah." (4) It is further narrated from him that he said: "Separation and taking back must be through witnesses." (5)

This is also like the previous narration, which does not carry proof for making (witnessing) an

essential condition.

However, a text has been narrated from 'Ata in which there is a possibility of conditioning the validity of divorce upon the presence of witnesses...

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...It is recorded. Narrated from Ibn Jurayj, he said: "Ata was asked about a man who gave a divorce (once) in the presence of one person and then gave another divorce (another time) in the presence of another person. He said: 'These are of no effect; because each person has witnessed only one instance of divorce each.'" (6)

In this context, it could be said that this is an argument in favor of witnesses being a prerequisite for divorce. However, the matter cannot be accepted with certainty; rather, the more likely interpretation is what the compiler of this narration, namely Abdur Razzaq, understood—

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(1) At-Tabari cited this in his Tafsir, 23/444.

(2) See: Musannaf Abdur Razzaq, 6/135.

(3) See: Musannaf Abdur Razzaq, 6/138.

(4) See: Musannaf Abdur Razzaq, 6/137.

(5) See: Musannaf Ibn Abi Shaybah, 4/30.

(6) See: Musannaf Abdur Razzaq, 6/374.

The author has mentioned two more narrations besides this one under the chapter 'The person who gives divorce in the presence of two men'. The issue pertains to the discrepancy in testimony given against an individual; for instance, if one person testifies against someone for a thousand (dirhams) and another testifies for five hundred, the lesser amount is accepted. Similarly, if someone testifies against someone for three divorces and another testifies for one divorce, then one divorce is accepted. Therefore, the intention here is: the divorce will not take effect upon him because it has not been proven against him through two witnesses; it is not that the divorce is not being implemented due to a lack of witnesses.

It is preferable to interpret the matter in this way, as consensus has been reported on this issue. And for those who narrated this, it is unlikely that such an opinion would remain hidden from them.

Fifth point: Simply because a statement is attributed to one of the predecessors among the Salaf is not sufficient to establish it as evidence or for that statement to be considered acceptable. This is especially true in a matter where the scholars of the Ummah have reached a consensus on the contrary position. Therefore, even if the attribution to Ata in this regard is authentic, it belongs to those isolated statements which are not permissible to act upon. This is because the scholars have not followed him in this matter, and there is no evidence for it in the Book of Allah. At most, if it is accepted that divorce is included in the verse, its meaning is that having witnesses is obligatory (wajib). Witnesses are kept for something that has been validly executed. It is not the case that the original divorce becomes void due to the absence of witnesses. Rather, it is mandatory for the husband to have witnesses, and if the wife claims divorce against him due to a lack of proof, it would not be permissible for the husband to deny the divorce. This is because acknowledging it is religiously binding upon him.

Sixth point: The requirement of witnesses being a condition does not mean it is a condition for a judicial verdict. It is possible to have witnesses outside of a court. Therefore, if we were to accept

a valid difference of opinion for the sake of argument, that difference is that divorce will be effective if witnesses are present; it is not that a court session is a condition for divorce.

Based on the aforementioned discussion, imposing conditions that create obstacles to the implementation of divorce—such as a judge's

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...imposing the condition of registration, or the presence of witnesses, or disregarding acceptable confessions or testimony—none of these fall under valid Ijtihad, nor are they part of reliable Sharia governance.

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However, this does not mean that every condition of the judicial process regarding divorce is unacceptable. Rather, for the sake of documentation and the protection of rights, judicial involvement can be made a condition. In this case, it would be mandatory to authenticate the divorce in court, and one would be held accountable for any negligence in this regard. Or, in the event of a dispute, a claim of divorce will not be recognized without the presentation of evidence. Or the legal process of divorce will be stayed, and it will not be completed until both the husband and wife appear in court and reach an agreement on all post-divorce rights; and other such matters. All these are acceptable areas of public-interest-based Ijtihad. This does not hinder the efficacy of any Sharia ruling; instead, it merely necessitates documentation to ensure that people's rights are not lost.

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